Supreme Court, U. S.
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In the Supreme Court of the United States

Term, 197
No 77-799

TONY AQUILINO, et al.*,
Petitioners

vs.

McGRAW-EDISON COMPANY, a Corporation, and TRUSTEES OF THE McGRAW-EDISON COMPANY PROFIT SHARING TRUST,
Respondents

PETITION FOR WRIT OF CERTIORARI

WRAY G. ZELT III,
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*A complete list of Petitioners annexed as Appendix "C".

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IN THE SUPREME COURT OF THE UNITED STATES

———————

——————— Term, 197—

No. ———————

———————

TONY AQUILINO, et al.

Petitioners

vs.

McGRAW-EDISON COMPANY, a Corporation, and TRUSTEES OF THE McGRAW-EDISON COMPANY PROFIT SHARING TRUST,

Respondents

———————

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

———

Petitioners pray that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Third Circuit entered on September 15, 1977.

OPINIONS BELOW

The Opinion of the District Court for the Western District of Pennsylvania granting the Defendants' motion for summary judgment is printed in Appendix "A" attached hereto.

An opinion was not written by the Third Circuit Court of Appeals pursuant to its judgment affirming the decision of the District Court.

JURISDICTION

The judgment of the Court of Appeals for the Third Circuit was made and entered on September 15, 1977, and a copy thereof is appended to this petition as Appendix "B". The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTION PRESENTED

Where a trust is created by an employer for its employees, can a majority of the employee-beneficiaries of the trust, upon a termination of the trust, bind an individual employee-beneficiary to a particular disposition of the trust assets?

STATUTES INVOLVED

The parties stipulated that:

> "20. The Profit Sharing Plan was, as of December 31, 1973, a qualified plan within the meaning of Section 401 (a) of the Internal Revenue Code and was intended by the Company and the Trustees to be administered accordingly. (Appendix "A", page 53a.)"

The validity of Section 401 (a) of the Internal Revenue Code may be involved from the standpoint that the Defendant, McGraw-Edison Company, took the benefit of a business deduction for the funds contributed to the Profit Sharing Trust and thereafter, February, 1974, reacquired the use of these assets to fund or pay for the Company's obligations under the new Pension Plan.

STATEMENT

The suits of the Plaintiffs arise as a result of the termination of the McGraw-Edison Company Profit Sharing Plan at the Power Systems Division in Canonsburg, Pennsylvania, and the conversion of the Profit Sharing Trust assets to the use of the McGraw-Edison Company (the Company) to fund and pay its new fixed benefit obligations under a Pension Plan agreed upon during the course of collective bargaining between the Company and the Union in early 1974.

Cross motions for summary judgment were presented to the District Court on an agreed upon statement of facts essentially as follows:

The McGraw-Edison Company Profit Sharing Plan (the Profit Sharing Plan) was created by the Company and instituted at the Power Systems Division (Plaintiffs' place of employment) beginning in 1953. The Profit Sharing Plan provided for an irrevocable trust into which the Company periodically contributed a certain percentage of its profits and in addition matched contributions made by employees if they chose to make them. The Plaintiffs herein, for the most part, did contribute their own money into the trust. Strict accounting of an individual employee's trust assets was maintained.

The trust was *not* created as the result of collective bargaining and was never the subject of collective bargaining from its inception until its demise in early 1974 from

which time no further contributions have been made by the Company into the trust.

On or about February 18, 1974, after unrelenting insistence by the Union for a fixed benefit retirement program, the Company offered, and a majority of the Union employees accepted, a pension of $8.00 for each year of service. The Company also offered an alternative for past service, namely $30.00 per share for each share of McGraw stock held in an individual's account plus the individual's own contributions with interest at five percent. A majority of the employees voted in favor of the aforesaid proposal. The Plaintiffs herein did not, objecting to the disposition of their trust assets and the failure to obtain their individual consent thereto.

Under the terms of the Profit Sharing Plan, the trust was irrevocable, however, the Company (the Settlor) could terminate or amend it:

> "Sec. 10—Amendment and Discontinuance
>
> The company may amend or discontinue the plan at any time upon written notice to the other employers, but no employer will benefit thereby, as provided in the trust agreement. Participants will be notified of any such amendment or discontinuance within a reasonable period of time thereafter."

Under the terms of the Profit Sharing Plan an individual's benefits became vested on a graded scale over a period of fifteen years of employment.

The Profit Sharing Plan was implemented by a document known as the "Profit Sharing Trust Agreement". Article VIII entitled "Distribution on Termination" provided in part:

"Upon termination of the plan as respects any employer, the trustees shall distribute to each participant employed by such employer his share in the trust fund in accordance with the terms of the plan, . . ."

REASONS FOR GRANTING THE WRIT

One of the issues decided in *Elgin J. & E. Ry. Co. vs. Burley,* 325 U.S. 711, 89 L.Ed. 1886 (1945), was that a union employee was not completely controlled or regulated by the collective bargaining agreement—he could acquire, during the course of his employment, rights and interests personal to himself and with respect to which he alone could render a decision. See *Elgin J. & E. Ry. Co. vs. Burley* at pgs. 1900-1905.

Just as the plaintiffs in *Elgin* considered their rights sufficiently personal to warrant proceeding through the courts to protect them, so too do the Plaintiffs in the instant suit, having watched their trusts grow in many cases for twenty years and having contributed a portion of their own paycheck into their trusts to obtain an additional matching contribution from the Company.

Of course, the feeling of the ten plaintiffs in *Elgin* or the present one hundred twenty-seven Plaintiffs does not decide the issue. The circumstances must warrant the application of the *Elgin* case—and they do.

As noted in *Elgin,* employee retirement programs can certainly be the subject of collective bargaining. On the other hand, an employee's retirement program need not necessarily originate as a result of collective bargaining or have the Union (in our case United Steel Workers of America) as a party thereto. Whereas in *Dwyer vs. Climatrol Industries, Inc.,* 403 F.Supp. 683 (E.D. Wisc. 1975), the

retirement program was instituted through collective bargaining and the union was a party, in our case the Union was not a party to the McGraw-Edison Company Profit Sharing Plan and the Plan did not originate as a result of collective bargaining. Even though the parties had stipulated to this latter fact, the District Court ignored the stipulation as well as perhaps the provision of the Plan providing that the Company could unilaterally terminate or amend the Plan and the Trust—hardly what one would expect to find in an agreement to which a union was a party.

To deny that the interests of the Plaintiffs in their trusts were not or had not reached the threshold of "personal" rather than "union" ignores at least four circumstances:

1. As beneficiaries of a trust, the Plaintiffs were beneficial or equitable owners thereof. The trust assets represented payments irrevocably made by the Company (the Settlor) to the Plaintiffs, with simply the enjoyment thereof postponed. In addition to Company payments into the trust, many employees contributed a portion of their own wages and garnered an additional Company contribution.

2. Apart from the ownership rights of the employees per se, the interests of the Plaintiffs in their trust assets had vested in varying degrees, mostly 100 percent, pursuant to the vesting provisions of the Plan itself. In this respect the McGraw-Edison Profit Sharing Plan might be said to have anticipated the Employees' Retirement Income Security Act which instituted the requirement of vesting in a retirement plan by way of protecting the interests of the employees.

3. The Profit Sharing Plan was qualified for Internal Revenue Service purposes and as such, under I.R.C. 401, when the Plan is terminated or contributions are discontinued, the interests of the employees become fully vested and nonforfeitable. See in this respect Goldberg, *Pension Plans and Executive Compensation,* 2.11-2.76; and Greenough and King, *Pension Plans and Public Policy,* ch. 7, "Public Policy—The Vesting of Pension Benefits".

4. When, in February, 1974, the Company found that a majority of the Union employees had accepted the Company's pension plan proposal, the Company terminated the Profit Sharing Plan, i.e. no further contributions were made into the trust, no more matching, etc. Article VIII of the Profit Sharing Trust Agreement, being a document implementing the Profit Sharing Plan, provides as follows:

Article VIII

Distribution on Termination

". . . . Upon termination of the Plan as respects any employer, the Trustee shall distribute to each participant employed by such employer his share in the Trust Fund in accordance with the terms of the plan, . . ."

The facts and documents in this case must have been a phantasmagoria to the District Court. Not only did it find the applicability and control of collective bargaining when it did not exist, the District Court ignored all of the above-enumerated occurrences of vesting, and then concluded that an amendment by the Company to the Profit Sharing Plan, made ten months after it had been terminated, en-

abled the Company to convert the trust assets back to its own treasury in return for—and undoubtedly to help fund —a fixed obligation to the trust beneficiaries.

The Courts have been wrestling with the problem of "personal" versus "union" interests in retirement funds or benefits for several decades. See for example, *Hauser vs. Farwell, Ozmun, Kirk, & Co.*, 299 F.Supp. 387 (1969), where the Court ruled that vesting had occurred and *Rothlein vs. Armour and Company*, 377 F.Supp. 506, 509, 513 (1974), where the Court ruled that it had not. The prevailing uncertainty brought about the instant suit which has engendered concurrent confusion and uncertainty among several thousand employees at the Power Systems Division of the McGraw-Edison Company with respect to their retirement benefits, as well as, the validity of their collective bargaining agreement (both 1974 and 1977 agreements) and the Company's financial situation.

Although the rights of the Plaintiffs in and to their retirement benefits had become personal to them for the several reasons stated, the "vesting" provided for in the McGraw-Edison Plan is now mandatory under ERISA. Thus, the issue of "personal" versus "union" rights and interests will undoubtedly arise with increased frequency and with unavoidable untoward effects upon the employees, the union and the company involved. It is important, therefore, that *Elgin J. & E. Railway Co. vs. Burley* be revisited, interpreted and applied if appropriate, to the issue of the vesting of retirement benefits.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

WRAY G. ZELT III,
Attorney for Plaintiffs

APPENDIX "A"

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 75-81

VALENTINO BLANCHIN, et al.

vs.

McGRAW-EDISON COMPANY, a Corporation, and
Trustees of the McGraw-Edison Company
Profit-Sharing Trust

MEMORANDUM

In this action plaintiff-employees of the McGraw-Edison Company seek distribution of their interests under the McGraw-Edison Profit Sharing Plan, a contributory profit-sharing plan established by the defendant McGraw-Edison Company (the Company) and administered by the defendant Trustees of the McGraw-Edison Profit Sharing Trust (the Trustees). The parties have filed cross-motions for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure and have stipulated to various facts and written exhibits. Upon consideration of the applicable law, it is concluded that there are no material is-

sues of fact in dispute and that the case is appropriate for an entry of summary judgment.

Each participant's interest in the McGraw-Edison Profit Sharing Plan was represented by two trust accounts, a stock account, consisting of shares of the common stock of the Company purchased by the Trustees, and a general account, consisting of a proportionate share of the other assets held by the Trustees. It was expressly provided that shares of Company stock would be purchased by the Trustees whenever feasible.

Normal distribution of accounts was governed by sections 7 and 8 of the profit sharing plan. A participating employee would receive payment in full (the mode of payment, i.e., lump-sum cash, transfer of stock, purchase of annuity, etc., was left to the Trustees' discretion) upon death, disability retirement, or retirement at age 62. A participant employee who for any other reason left employment with the Company prior to attaining age 62 was entitled to the aggregate of his contributions plus interest and if he had been continuously employed by the Company for five years or more a scheduled percentage of the Company's contributions. Distribution would also occur, under article VIII of the trust, upon certain "terminations" of the profit sharing plan.

The Company retained the right to amend the profit sharing plan in section 10 and the trust in article VII, except that the Company could not receive any repayment from the trust and the moneys could only be spent for the benefit of employees. It was also a condition of the Company's right to amend that the value of each participant's account would be the same or greater than that to which he

would be entitled were he to terminate his employment on the date of amendment.

Plaintiffs, who number over 500 in this action,[1] were members of locals 4561, 3968 and 6449 of the United Steelworkers of America and were employed by the Power Systems Division, Canonsburg, Pennsylvania Plant, of the Company under collective bargaining agreements which provided that the terms of the profit sharing plan be extended to them. In October of 1973, the said collective bargaining agreements expired and the members of locals 4561, 3968 and 6449 went on strike. As a result of the ensuing collective bargaining, it was agreed, *inter alia,* that a fixed-benefit pension plan would replace the profit sharing plan. The collective bargaining agreement was ratified in February of 1974 by a majority of the members of locals 4561, 3968 and 6449.

The newly negotiated pension plan entitles employees or their beneficiaries to a fixed monthly payment in an amount determined by multiplying the employee's number of years of service by $8.00. Certain employees (including all of the plaintiffs) were also given the right to have their pension benefits calculated on the basis of an "adjusted profit sharing account" with respect to years of service accrued prior to February, 1974. It is undisputed that by reason of the valuation formula applied in crediting employees for their past services, the value of the various plaintiffs' pension rights was measurably greater as of the date of the 1974 agreement than the value of their account rights under the profit sharing plan. In return, all partici-

[1] Rule 23 of the Federal Rules of Criminal Procedure is not invoked, and class action certification is not sought.

pating employees were to be removed from the profit sharing plan, and the plan funds representing past employer contributions on behalf of these employees were to be used to provide the initial funding for the pension plan. The portion of employees' accounts attributable to their own contributions were to be held in trust separately for later distribution to them with interest. Additional funding for the new pension plan was to be provided by the Company as needed.

The profit sharing plan and trust agreements did not expressly reserve to the Company and the locals the right to modify terms through collective bargaining, nor did they provide for the transfer of profit sharing funds out of the trust. Nevertheless, pursuant to and shortly after the collective bargaining agreement of February 10, 1974, the Company ceased profit sharing contributions on behalf of members of locals 4561, 3968 and 6449. In December, 1974, the Company amended the profit sharing plan to formally remove the members of those locals from the profit sharing plan. The amendment also directed the trustees to segregate the trust funds allocatable to these employees' accounts, which the Trustees have done, pending disposition of this action.

The essence of the plaintiffs' complaint is that their right to the trust accounts under the profit sharing plan were vested and could not be affected by the 1974 collective bargaining agreement and ratification. Plaintiffs also contend that, their interests in the profit sharing plan and trust having been "terminated," a distribution of their relative interests is necessary. In response, both the Company and the Trustees contend that the plaintiffs are bound by

the 1974 collective bargaining agreement and that the profit sharing plan and trust were not "terminated."

Since the plaintiffs seek a remedy for contractual rights arising from a collective bargaining agreement, this court has subject-matter jurisdiction under §301 (a) of the Labor Management Relations Act of 1947.[2] *Smith v. Evening News Association,* 371 U.S. 195 (1962).

The plaintiffs rely heavily on the decision of the district court in *Hauser v. Farwell, Ozman, Kirk & Co.,* 299 F.Supp. 387 (D. Minn. 1969), in which former employees brought an action against the employer-company and their bargaining agent union contending that a plant close-down agreement entered into between the defendants unlawfully eliminated pension rights granted the plaintiffs by an earlier collective bargaining agreement. The pension rights in question were described in the original agreement as being *"fully vested* in each participant," *id.* at 390, and the court found accordingly that the rights were vested at the time the union attempted to bargain them away. Reasoning that "whereas a Union may bargain as to prospective matters such as seniority rights, future conditions of employment, etc., it cannot bargain away the accrued or vested rights of its members," the district court held that the former employees were to be restored to the pension rights which accrued under the original pension agreement. 299 F. Supp. at 393, 396, discussing *Elgin, Joliet & Eastern Ry. v. Burley,* 325 U.S. 711 (1945), adhered to, 327 U.S. 661 (1946).

[2] Section 301(a) provides:

"Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organization, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

29 U.S.C. §185(a) (1970).

Unlike the agreement in Hauser, no rights under the profit sharing plan and trust in the instant case are described as "vested." On the contrary, the plaintiffs' rights thereunder were substantially limited by the broad power of amendment reserved to the company, including the company's right to eliminate all of the participant's interests save his right to that to which he would have been entitled had he resigned on the date of the amendment.[3] See, *e.g.,*

[3] Section 10 of the Profit Sharing Plan provides:

"The company may amend or discontinue the plan at any time upon written notice to the other employers, but no employer will benefit thereby, as provided in the trust agreement. Participants will be notified of any such amendment or discontinuance within a reasonable period of time thereafter."

The Trust Agreement provides in article VII-1:

"*Amendment.* This trust agreement and the plan may be amended from time to time by the company, except as follows:

"(a) The duties and liabilities of the trustees cannot be changed substantially without their consent;

"(b) Under no condition shall any such amendment result in the return or repayment to any employer of any portion of the trust fund or the income therefrom or result in the distribution of the trust fund for the benefit of anyone other than employees of the employers and their beneficiaries;

"(c) No such amendment shall reduce the value of a participant's share in the trust fund below an amount equal to the amount to which he would have been entitled if he had resigned from the service of all of the employers on the date of such amendment."

Jackson v. TransWorld Airlines, Inc., 457 F.2d 202 (2d Cir. 1972); *Genevese v. Martin-Marietta Corp.*, 312 F. Supp.1186 (E.D. Pa. 1969). Any other expectancies under the plan cannot be deemed "vested." The only profit-sharing plan which might be considered "vested" in the plaintiffs on February 10, 1974—the resignation *values* of their accounts—were unaffected by the collective bargaining agreement, which more than adequately preserved for each participant the entire *value* of his profit sharing account as of that date.

The provisions of the profit sharing plan having been extended to the plaintiffs in this case through prior collective bargaining, a transition from profit sharing to a fixed-benefit pension plan was an appropriate subject of collective bargaining in February of 1974. Indeed, 29 U.S.C. §158(a) (5) (1970), as applied in *Inland Steel Corp. v. NLRB*, 170 F.2d 247 (7th Cir. 1948), compelled McGraw-Edison to negotiate on the subject once it was proposed by the unions. It was within the power of locals 4561, 3968 and 6449 and the Company to negotiate and determine the terms of the pension plan effected by the 1974 collective bargaining agreement, so long as those terms did not affect the vested rights of employees established by prior agreements. *Elgin, Joliet & Eastern Ry. v. Burley*, 325 U.S. 711, 739 (1945). The subsequent amendment to the profit sharing plan adopted in accordance with the collective bargaining agreement was also within the authority reserved to the Company under the terms of the profit sharing plan itself. See Note 3 *supra*.

The plaintiffs, nevertheless, contend that they are entitled to a distribution under the terms of the profit sharing plan and trust, asserting that the Company by agreeing with

the locals to remove these bargaining unit employees from the profit sharing plan, caused a "termination" of the plan which triggered the following provision:

> "Upon termination of the plan as respects all employers, each participant's share of the trust fund shall be fully vested in him and shall be distributed to him in accordance with the terms of the plan. Upon termination of the plan as respects any employer, the trustees shall distribute to each participant employed by such employer his share in the trust fund in accordance with the terms of the plan. . . ." Trust Agreement art. VIII.

It is concluded, however, that any inconsistency between the terms of the profit sharing trust and the terms of the collective bargaining agreement of 1974, subsequently implemented by appropriate amendment to the profit sharing trust, must be resolved in favor of the collective bargaining agreement, the most recent specification of the rights and obligations of the parties concerned.

An appropriate order will be entered.

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 75-81

VALENTINO BIANCHIN, et al.

vs.

McGRAW-EDISON COMPANY, a Corporation, and
TRUSTEES of the McGRAW-EDISON COMPANY
PROFIT-SHARING TRUST

ORDER

AND NOW, this 30th day of September, 1976, for the reasons stated in the foregoing Memorandum, the defendants' Motion for Summary Judgment be and the same is hereby granted.

IT IS ORDERED that judgment be and the same is hereby entered in favor of McGraw-Edison Company and Trustees of the McGraw-Edison Company Profit Sharing Trust, defendants, and against Valentino Bianchin, et al., plaintiffs.

(s) Herbert P. Sorg, *C.D.J.*

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APPENDIX "B"

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 76-2589

VALENTINO BIANCHIN, et al.

v.

McGRAW-EDISON CO., et al., TONY AQUILINO, et al.,

Appellants

On Appeal from the United States District Court
for the Western District of Penna.

C.A. No. 75-81

Argued September 9, 1977

Before:

VAN DUSEN, ADAMS and HUNTER, *Circuit Judges*

JUDGMENT ORDER

After consideration of the contentions raised by appellants, it is

ADJUDGED AND ORDERED that the judgment of the district court be and it is hereby affirmed.

Each side to bear its own costs.

By the Court,
(s) Arlin M. Adams
Circuit Judge

Attest:
(s) M. Elizabeth Ferguson
Chief Deputy Clerk

Dated: September 15, 1977

Certified as a true copy and issued in lieu
of a formal mandate on October 7, 1977.

Test: Thomas F. Quinn
Clerk, United States Court of Appeals
for the Third Circuit

APPENDIX "C"

Herb Abbondanza; Linn R. Adams; John A. Agostinelli; Samuel Ahwesh; Rino Altieri; Tony Aquilino; Nick Bardos; John Barrett; Ernest L. Beccari; Alfred Bernard; Raymond A. Bissiere; Louis Borrelli; Alfred J. Borza; James Boyan; Frank T. Bozek; Carl F. Bruno; Chester E. Cerbach; Frank J. Cessar; Michael Cherpak; Stephen Cherpak; John P. Chismody; Norman Crequt; Edward Cushman; Anthony W. Cwiklinski; Frank DeGennaro; Louis Donner; Lawrence C. Duessel; John Dupesko; Anthony D. Durkacs, Sr.; Pete Filius; Valentino Filosi; Donald J. Frank; Hugh S. Frantz; David Frye; Michael Gayarski; Ernest Gill; Joseph P. Gleba, Jr.; Lewis R. Greely; Mike Gwozda; Harold E. Hanna; James Hanna; Vincent W. Hartman; Charles Hatalsky; Robert W. Hayes; Joseph B. Hewitt; John W. Hood; Andrew J. Hornak; Carl F. Horvath; William Horwatt; William R. Hottel; Michael Hricak; Earl R. Jaudy; Philip Joseph; John Jurcic; Edward Kania; Walter J. Kania; Stephen J. Kazak; Elmer A. Kerekes; Frank A. Kern; Walter Kesneck; John W. Kiefer; Harry Kobert; Edwin H. Kochanski; Joe A. Koklich; Frank Kotyk; Nelson L. Kraeer; Sylvester J. Kubacki; Pete Kudack; John Dvak; Robert H. Lawther; Paul Lemanakis; Julius P. Lis; John P. Longo; Pete Luginski; Stanley F. Luginski; David C. Lutty, Sr.; George E. Malacky; Albert Marinelli; Andrew Martin, Jr.; Pete Matyuf; James F. McCloskey; Stanley E. Micinski; Joseph E. Miller; Guy W. Montgomery; Ernest R. Morris; Steve Morris; Frederick E. Motto; Henry Mullins; Frank Negle; J. Norvell; Grover

O'Bryan; James W. Opatt; Henry Ozelski; Samuel Paletta; Elmer I. Palmer; Joseph J. Patrick; William J. Pavcic; John Pawlish; Edward S. Popiolkowski; Carl Popovich; Louis P. Powell; Peter J. Powell; Bruno Prandini; John Ptak; Walter Raspet; Robert Rebonic; Wilbert M. Rettinger; William Rockovich; Ronald G. Rothka; Rudolph Rubis; Joseph S. Rybacki; Walter Rybacki; Robert J. Schreck; Daniel Sedora; Howard R. Smith; Patsy Smoke; James A. Sobrasky; Otis Spicer; Robert Spiller; Harry Spryshak; Roy Straessley; Ray Sutch; George Svitek; Gerald L. Svitek; William Sztukowski; George Teleski, Jr.; George Toth; Steve R. Toth; Stanley J. Twardy; Anthony Udodow; Steve Udodow; Ben Urso; Ronald L. Ward; Clair E. Watt; Joseph E. Wiencek; Edward F. Wozniak; Joseph M. Wozniak; Jean Woznichak; Walter Woznichak; Michael Wyck; John Yesenchak; Steve Zaken.

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Respondents.

JOINT BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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A separate Respondents' Appendix is submitted with this Joint Brief In Opposition.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1977

No. 77-799

TONY AQUILINO, et al.,

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vs.

McGRAW-EDISON COMPANY, a Corporation, and TRUSTEES OF THE McGRAW-EDISON COMPANY PROFIT SHARING TRUST,

Respondents.

JOINT BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

For the reasons set forth in this joint brief in opposition, respondents pray that the petition for a writ of certiorari in this case be denied.

OPINIONS BELOW

The opinion and judgment order of Chief (now Senior) Judge Sorg of the United States District Court for the Western District of Pennsylvania granting summary judgment to defendants McGraw-Edison Company and the Trustees of the McGraw-Edison Company Profit Sharing Trust are printed in Appendix A to the Petition for Writ of Certiorari. The opinion of the District Court is not officially reported.

The judgment order of a unanimous panel of the United States Court of Appeals for the Third Circuit affirming the judgment of the District Court is printed in Appendix B to the Petition for Writ of Certiorari.

JURISDICTION

This case is within federal court subject matter jurisdiction under Labor Management Relations Act §301(a), 29 U.S.C. §185(a)(1970), which empowers federal courts to hear "suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce. . . ."

STATUTES INVOLVED

This action involves National Labor Relations Act §8 (a)(5), 29 U.S.C. §158(a)(5), which provides as follows:

> "It shall be an unfair labor practice for an employer —
>
> • • •
>
> (5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a) of this title."

STATEMENT OF THE CASE

The opinion of the District Court for the Western District of Pennsylvania accurately sets forth the facts of the case, many of which were misstated in the petition. The District Court's statement of facts reads in relevant part as follows:

> "In this action plaintiff-employees of the McGraw-Edison Company seek distribution of their interests under the McGraw-Edison Profit Sharing Plan, a contributory profit-sharing plan established by the defendant McGraw-Edison Company (the Company) and administered by the defendant Trustees of the McGraw-Edison Profit Sharing Trust (the Trustees).
> . . .

Each participant's interest in the McGraw-Edison Profit Sharing Plan was represented by two trust accounts, a stock account, consisting of shares of the common stock of the Company purchased by the Trustees, and a general account, consisting of a proportionate share of the other assets held by the Trustees. It was expressly provided that shares of Company stock would be purchased by the Trustees whenever feasible.

Normal distribution of accounts was governed by sections 7 and 8 of the profit sharing plan. A participating employee would receive payment in full (the mode of payment, i.e., lump-sum cash, transfer of stock, purchase of annuity, etc., was left to the Trustees' discretion) upon death, disability retirement, or retirement at age 62. A participant employee who for any other reason left employment with the Company prior to attaining age 62 was entitled to the aggregate of his contributions plus interest and if he had been continuously employed by the Company for five years or more a scheduled percentage of the Company's contributions. Distribution would also occur, under article VIII of the trust, upon certain 'terminations' of the profit sharing plan.

The Company retained the right to amend the profit sharing plan in section 10 and the trust in article VII, except that the Company could not receive any repayment from the trust and the moneys could only be spent for the benefit of employees. It was also a condition of the Company's right to amend that the value of each participant's account would be the same or greater than that to which he would be entitled were he to terminate his employment on the date of amendment.

Plaintiffs, who number over 500 in this action, were members of locals 4561, 3968 and 6449 of the United Steelworkers of America and were employed by the Power Systems Division, Canonsburg, Pennsylvania Plant, of the Company under collective bar-

gaining agreements which provided that the terms of the profit sharing plan be extended to them. In October of 1973, the said collective bargaining agreements expired and the members of locals 4561, 3968 and 6449 went on strike. As a result of the ensuing collective bargaining, it was agreed, inter alia, that a fixed-benefit pension plan would replace the profit sharing plan. The collective bargaining agreement was ratified in February of 1974 by a majority of the members of locals 4561, 3968 and 6449.

The newly negotiated pension plan entitles employees or their beneficiaries to a fixed monthly payment in an amount determined by multiplying the employee's number of years of service by $8.00. Certain employees (including all of the plaintiffs) were also given the right to have their pension benefits calculated on the basis of an 'adjusted profit sharing account' with respect to years of service accrued prior to February, 1974. It is undisputed that by reason of the valuation formula applied in crediting employees for their past services, the value of the various plaintiffs' pension rights was measurably greater as of the date of the 1974 agreement than the value of their account rights under the profit sharing plan. In return, all participating employees were to be removed from the profit sharing plan, and the plan funds representing past employer contributions on behalf of these employees were to be used to provide the initial funding for the pension plan. The portion of employees' accounts attributable to their own contributions were to be held in trust separately for later distribution to them with interest. Additional funding for the new pension plan was to be provided by the Company as needed.

The profit sharing plan and trust agreements did not expressly reserve to the Company and the locals the right to modify terms through collective bargaining, nor did they provide for the transfer of profit sharing funds out of the trust. Nevertheless,

pursuant to and shortly after the collective bargaining agreement of February 10, 1974, the Company ceased profit sharing contributions on behalf of members of locals 4561, 3968 and 6449. In December, 1974, the Company amended the profit sharing plan to formally remove the members of those locals from the profit sharing plan. The amendment also directed the trustees to segregate the trust funds allocatable to these employees' accounts, which the Trustees have done, pending disposition of this action.

The essence of the plaintiffs' complaint is that their right to the trust accounts under the profit sharing plan were vested and could not be affected by the 1974 collective bargaining agreement and ratification. Plaintiffs also contend that, their interests in the profit sharing plan and trust having been 'terminated,' a distribution of their relative interests is necessary. In response, both the Company and the Trustees contend that the plaintiffs are bound by the 1974 collective bargaining agreement and that the profit sharing plan and trust were not 'terminated' ". (Footnote omitted).

ARGUMENT

The petition for a writ of certiorari suggests no issues in this case which warrant review for any of the reasons set forth in Rule 19 of the Supreme Court Rules. A writ of certiorari should not issue in this case, particularly in the light of the recent denial of a petition for a writ of certiorari presenting the same questions as this case in *Dwyer* v. *Climatrol Industries, Inc.*, 403 F. Supp. 683 (E.D. Wisc. 1975), *aff'd.* 544 F.2d 307 (7th Cir. 1976), *cert. den.* 97 S.Ct. 1553 (1977). In *Dwyer,* the questions presented to this Court were:

> "(1) Did plaintiff employees have vested property interest in pension plan agreement with company that may not be terminated without their consent?
>
> "(2) Are company and union estopped from terminating pension benefits?
>
> "3) Has union breached its duty of fair representation by agreeing to closedown agreement?" (45 U.S.L.W. 3551.)

In an attempt to avoid the obvious identity of the issues in *Dwyer* and in this case, petitioners have repeatedly asserted that retirement benefits for the petitioners were never the subject of collective bargaining between the union to which the petitioners belong and McGraw-Edison. That factual assertion by the petitioners is simply not correct and is contrary to the record below. The McGraw-Edison Company Profit Sharing Plan had been a subject of collective bargaining between the company and the local unions of which petitioners are members for many years prior to the change in benefits which

is the subject of this lawsuit. The defendants submitted to the trial court and included in the printed appellate record a collective bargaining agreement of December 14, 1954 between McGraw-Edison and the United Steelworkers of America on behalf of Local Union No. 4561 and a collective bargaining agreement of December 5, 1956 between McGraw-Edison and the United Steelworkers of America on behalf of Local Union No. 3968, both of which agreements provided for coverage of the members of the petitioners' local unions under the Profit Sharing Plan. The relevant paragraphs of those agreements are paragraph 27 of the Local Union No. 4561 agreement of December 14, 1954 and paragraphs 104-106 of the Local Union No. 3968 agreement of December 5, 1956. The full text of those collective bargaining agreements is printed in Respondents' Appendix submitted with this Joint Brief In Opposition. Given the uncontested documentary evidence that the petitioners' retirement benefits had been the subject of collective bargaining for many years, the District Court was entirely correct in its factual findings and legal conclusions. The distinction between this case and *Dwyer* asserted at pages 9 and 10 of the petition is specious.

Petitioners cite *Elgin J. & E. Railway Co.* v. *Burley,* 325 U.S. 711 (1945), as grounds for issuing a writ of certiorari in this case. The *Elgin* case stands for the principle that certain rights of employees cannot be adversely affected by collective bargaining agreements, but are enforceable by employees through the grievance procedure established under collective bargaining agreements. The District Court fully recognized the principle established by the *Elgin* case, but held that no protected rights were infringed in this instance. In fact, the District Court found that "the value of the various plaintiffs' pension

rights was measurably greater as of the date of the 1974 agreement than the value of their account rights under the profit sharing plan." (Petition, Appendix A, p. 16.) Based on this finding, the District Court concluded that the value of respondents' interests in the profit-sharing plan was "more than adequately preserved" and that the "amendment to the profit-sharing plan adopted in accordance with the collective bargaining agreement was also within the authority reserved to the Company under the terms of the profit-sharing plan itself." (Petition, Appendix A, p. 20.)

Petitioners imply that questions of interpretation of certain federal statutes, raised for the first time before this Court, provide a basis for issuing a writ of certiorari in this case. Petitioners appear to suggest, indirectly and without specific citation or verbatim reproduction, that the Employee Retirement Income Security Act of 1974 ("ERISA") may apply to the facts to which the parties stipulated. No such contention was made to the courts below, nor was there any basis for so contending. The matters to which the petition relates occurred prior to the dates on which ERISA became effective as to employee benefit plans. As to existing plans, ERISA participation and vesting requirements were first effective for plan years beginning after December 31, 1975. ERISA §§201-11, 29 U.S.C. §§1051-61. Accordingly, a decision by this Court in this case would not be a precedent for future interpretations of ERISA. Moreover, there is no suggestion from the record that respondents would not have been in full compliance with the statute if it had been in effect.

Likewise, petitioners state that "the validity of Section 401(a) of the Internal Revenue Code may be involved" because respondents McGraw-Edison Company

claimed a deduction for its contributions under the profit-sharing plan maintained by it. (Petition p. 5.) Petitioners offer no reference to the record, nor is there any basis in the record, on which a determination can be made as to the income tax consequences of the transactions involved in this case. Whatever income tax issues petitioners are attempting to raise were never presented to the courts below for decision.

Petitioners suggest on the final page of their petition that there is "prevailing uncertainty" in the law concerning collectively bargained retirement benefits (Petition p. 12.). Petitioners cite two district court decisions as authority on this point. Those decisions obviously are not court of appeals decisions in conflict with the Third Circuit decision in this case. The "uncertainty" which petitioners suggest is nothing more than various courts interpreting different collectively bargained retirement plans in differing factual circumstances.

In essence, petitioners argue that events occurred in this case which under the terms of the governing plans and agreements require the relief which they seek. The District Court and Court of Appeals have rejected the interpretation of the plans and agreements which petitioners continue to put forth. This issue of contract interpretation simply is not a substantial federal question which should be decided by this Court.

CONCLUSION

Based on the foregoing, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

McGRAW-EDISON COMPANY, a Corporation, and TRUSTEES OF THE McGRAW-EDISON COMPANY PROFIT SHARING TRUST,
Respondents.

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Supreme Court, U. S.
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No. 77-799

In the

Supreme Court of the United States

OCTOBER TERM, 1977

TONY AQUILINO, et al.,

Petitioners,

vs.

McGRAW-EDISON COMPANY, a Corporation, and TRUSTEES OF THE McGRAW-EDISON COMPANY PROFIT SHARING TRUST,

Respondents.

RESPONDENTS' APPENDIX

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1977

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Petitioners,

vs.

McGRAW-EDISON COMPANY, a Corporation, and TRUSTEES OF THE McGRAW-EDISON COMPANY PROFIT SHARING TRUST,

Respondents.

RESPONDENTS' APPENDIX

LABOR AGREEMENT

between

PENNSYLVANIA TRANSFORMER COMPANY

and the

UNITED STEELWORKERS OF AMERICA

LOCAL 4561

12-17-54—12-16-57

HELLO!

Your Company and your Union take pride in presenting you with this copy of our labor agreement. Both of us are indeed pleased to welcome you to the fine group of men and women who make up our organization. We urge you to read this agreement carefully so that you may be completely aware of your benefits and responsibilities. We hope you will cooperate with us in carrying out the intent and purpose of this agreement as outlined in Section 1, and you will help us in every way you can to make our relationship as healthful, pleasant and profitable as possible.

For The Company:
F. L. Huber

For The Steelworkers:
Daniel Prystash
President, Local 4561

LABOR AGREEMENT

1. This agreement, dated the 14th of December, 1954, is between the Pennsylvania Transformer Company hereinafter referred to as the Company and the United Steelworkers of America, on behalf of Local Union No. 4561, hereinafter referred to as the Union.

Section 1—Purpose and Intent of the Parties

2. The purpose of the Company and the Union in entering into this labor contract is to set forth their agreement on rates of pay, hours of work and other conditions of employment so as to promote orderly and peaceful relations with the employees, and to achieve uninterrupted operations in the plant.

3. The Company and the Union encourage the highest possible degree of friendly, cooperative relationships between

their respective representatives at all levels and with and between all employees. The officers of the Company and the Union realize that this goal depends on more than words in a labor agreement, that it depends primarily on attitudes between people

in their respective organizations and at all levels of responsibility. They believe that proper attitudes must be based on full understanding of and regard for the respective rights and responsibilities of both the Company and the Union. They believe also that proper attitudes are of major importance in the local plant where day-to-day operations and administration of the labor agreement demand fairness and understanding.

4. They believe that these attitudes can be encouraged best when it is made clear that Company and Union Officials, whose duties involve negotiation of the labor agreement, are not anti-union or anti-company, but are sincerely concerned with the best interest and well-being of the Company and all employees. Accordingly, the Company and the Union, as evidence of attitude and intent, have agreed that during the life of this agreement, officials of their respective organizations shall meet from time to time for the purpose of appraising the problems, if any, which have arisen in the application, administration and interpretation of this agreement and which may be interfering with the attainment of their joint objective as set forth above. Such

meeting shall not be for the purpose of conducting continuing collective bargaining negotiations, nor to in any way modify, add to, or detract from the provisions of this agreement.

5. By such an arrangement, the parties are affording concrete evidence of a sincere attempt to accomplish the goal of cooperative good industrial relations and of their purpose to find ways to overcome difficulties or influences interefering with the attainment of their goal.

6. By such agreement, the parties believe that, they, as men of good will with sound purpose, may best protect private enterprise and its efficiency in the interest of all, as well as the legitimate interest of their respective organizations within the frame-work of a democratic society in which regard for fact and fairness is essential.

Section 2—Recognition

7. The Company recognizes the Union as the exclusive bargaining representative for all transformer testers except for supervisors as defined in the National Labor Relations Act as amended and all other employees. It is agreed that there shall

be no discrimination by supervisory employees nor other employees of the Company against any employee because of his membership in the Union.

8. It shall be a continuing condition of employment with the Company that all employees covered by this agreement, both present and new employees, with the exception of those listed in Section 2, paragraph 6 of this agreement, shall be and remain good standing members of the Union. Present employees who are not now members of the Union must become members within thirty (30) days from the date thereof. New employees shall become members within thirty (30) days after employment.

9. The Company shall deduct from their wages and turn over to the proper officers of the Union, the union dues, initiation fees and assessments of such members of the Union as individually and voluntarily certify in writing that they authorize such deductions.

10. The Company, for said employees, shall deduct from the first pay of each month, the union dues for the preceding month and promptly remit the same to the International Secre-

tary-Treasurer of the Union.

11. The Company shall continue to deduct dues at the rate currently in effect until officially notified of a change as provided below.

12. The sole authorized representative of the Union for the purpose of certifying the amount of any change in monthly dues or initiation fees to be deducted by the Company shall be the International Secretary-Treasurer.

Section 3—Hours of Work and Overtime

13. The normal hours of work shall be eight (8) per day and forty (40) per week. Time and one-half shall be paid for all hours in excess of eight (8) in any one day, or forty (40) in any one week. Time and one-half shall be paid for Saturday as such and double time for Sunday as such.

14. The Union recognizes that the nature of work in the Test Department necessitates the scheduling of overtime work and overtime hours by the Company. The members agree

to accept such overtime work. Individual members shall be excused from overtime assignments for a reasonable excuse.

15. The Company agrees to instruct all of its foremen that they should endeavor to advise all employees who are to work overtime that such overtime is to be worked at least two (2) hours before the end of the shift. It is recognized that emergencies may arise when such two hours' advanced notice might not always be possible.

16. It is agreed that the normal work week shall be Monday through Friday, inclusive. The normal workday shall be from 8:00 A. M. on one day to 8:00 A. M. the following day.

17. All hours worked in excess of twelve (12) hours in any one day shall be paid for at double time.

18. Overtime hours shall be equalized among all employees within a classified group of workers performing the same type of

work within a division. The Department Foreman shall keep an overtime chart for the purpose. This chart shall be reviewed once a month by the Department Foreman and the Department Steward. Any inequalities determined at this review will be

corrected the following month. Overtime refused shall be considered as overtime worked for purposes of equalization. This overtime cycle shall be determined on a seniority basis beginning with the senior employee and finishing with the youngest employee.

Section 4—Holidays

19. The Company shall observe the following holidays: New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas. Payment at straight time shall be made for the above holidays regardless of which day of the week they shall occur.

20. The above holidays shall be paid for at the rate of eight (8) hours at the employees classified dayrate if not worked. Payment to those who work on the above holidays shall be at the rate of time and one half their earnings earned while working the holiday, in addition to their holiday pay.

21. Only those employees who have worked 30 working days with the Company prior to the holiday shall be paid for

holidays that are not worked.

22. Payment for unworked holidays shall be made only to those hourly paid employees who have earned some wages during the week in which the holiday occurs.

23. Employees who are laid off shall be eligible for holiday pay for a period of thirty (30) days from the day of layoff, provided the employee returns to work when recalled.

Section 5—Wages and Insurance

24. Effective December 17, 1954, at 12:01 A. M., the Company shall place in effect the rates of pay outlined in Schedule "A" attached hereto and made part of this agreement. The rates and classifications outlined in Schedule "A" shall remain in effect for the duration of this agreement except as amended herein.

25. Effective December 17, 1955, at 12:01 A. M., the Company shall place in effect another general wage increase of five cents (5c) per hour and this shall be added to Schedule "A".

26. The Company and the Union agree that the contract

shall be reopenable for the discussion of wages only for a period of time beginning October 16, 1956, and ending December 16, 1956, at midnight and the contract shall expire in its entirety on December 16, 1957, at midnight. The Union reserves the right to discuss a Guaranteed Annual Wage Plan during the above outlined wage reopening period if the Basic Steel Industry has placed in effect a Guaranteed Annual Wage Plan prior to December 16, 1956.

Profit Sharing Plan

27. The Company and the Union agree that the McGraw Electric Company Profit Sharing Plan as amended to December 31, 1953, and described in the booklets issued to the employees upon the signing of this agreement shall be placed in effect with the following provisions:

(a) Employees, who are members of United Steelworkers, Local 4561, with three (3) or more years seniority as of July 1, 1954, effective retroactive to July 1, 1954, will be covered under the non-contributory phase (or 3% contributory plan if the employees

make retroactive contributory payments) of the McGraw Electric Company Profit Sharing Plan. Employees of this unit reaching their third anniversary after July 1, 1954, will be covered by the Plan on January 1 or July 1 following their third anniversary of employment.

(b) Employees with three or more years' seniority accrued as of January 1, 1955, may elect to join the contributory phase of the McGraw Electric Company Profit-Sharing Plan. Later hired employees may elect to do so on the July 1 or January 1 following their third anniversary of employment. This involves a 3% contribution from the employees, matched by 1½% from the Company as provided in the Plan.

(c) Profit-Sharing from the Company will involve the non-contributory Profit-Sharing contribution of the Company in amounts up to 15% of employees' yearly earnings according to the Plan formula with full withdrawal rights in the case of death, disability, or old age requirements. Vesting for service up to fifteen

(15) years will be as shown in the Plan. The Plan includes an investment program in the Company's stock and promises substantial accumulations. The non-contributory formula applied to 1951 or 1952 would have paid six percent (6%) of the employees' earnings. As applied to 1953, it paid 7.3% of the earnings of employees who participated in 1953. Figures indicate 1954 will exceed 1953. The contributory 1½% is added to the employees' own 3% savings. Dividends and accruals from employees' terminations will provide future additions to the individuals's funds.

(d) During the years 1954 through 1960, there will be no Union demands for any revision of this Plan.

(e) Copies of the Plan and material described in the Plan will be distributed to all employees in the unit. All employees will receive periodic financial information and will annually receive statements showing their participation.

28. The Company shall continue to contribute a sum of

approximately two and one half cents (2½¢) per man hour to be used to provide a hospital, medical, surgical plan for all employees. This sum shall be based on 2040 hours per year. The Company agrees to change the present $8.00 per day private room allowance to $10.00 per day private room allowance and will pay the cost of such change.

29. The Company agrees to continue in effect upon the signing of this agreement, an insurance program whereby each employee who has worked thirty (30) working days shall be insured for $4000.00 Life Insurance plus an additional $4000.00 Accidental Death & Dismemberment benefit.

30. The Company shall pay the cost to provide a Sickness & Accident Policy which will provide to the employees $40.00 per week for time lost due to accidents (which are not compensable under Workmen's Compensation) and sickness. Accident benefits shall begin with the first day and sickness benefits, with the eighth day.

31. The Company shall pay the cost to provide a plan which will pay the employees who are injured as a result of their

employment, the difference between $40.00 per week and the amount received under Workmen's Compensation payments. Accidents will be compensable beginning with the first day.

Shift Differential

32. The Company will pay a shift differential of ten cents (10¢) per hour to all employees working on the second and third shifts.

Change of Shift Bonus.

33. The Company shall pay two (2) hours at the employee's regular dayrate to anyone who is requested to change shifts during the work week for the Company's convenience. Such bonus shall not be paid if the change is made over the weekend.

34. If it should become necessary to employ women in the Electrical Test Department, the Company and the Union shall bargain collectively to establish rates for such jobs at the time the women are hired.

CALL IN PAY

35. Every employee who is called in to work, or any employee who reports to work and had not been told not to so report shall receive not less than four (4) hours of work at his regular occupation, or a comparable one, and shall receive his regular rate of pay therefor; or not less than four (4) hours pay at the discretion of the Company. The Company shall not be held liable, however, for reasons beyond its control.

Section 6—Grievance Procedure

36. It is mutually agreed that all grievances which arise in any division covered by this agreement shall be adjusted in the following manner:

(a) The aggrieved employee shall discuss his complaint verbally with the foreman and if no adjustment is reached, then

(b) A discussion shall be held between the foreman, the department steward, and the aggrieved employee. If

no satisfactory settlement is reached after this verbal discussion, the grievance shall be placed in writing by

the department steward and shall be referred to the department foreman. If no satisfactory settlement is reached within eight (8) hours after the written grievance has been presented to the foreman, the matter shall be referred within forty-eight (48) hours to

(c) The Zone Committeeman and the Company representative. In the event a satisfactory settlement is not reached in twenty-four (24) hours, the matter shall be referred within seventy-two (72) hours to

(d) The General Grievance Committee and the Company representative. If no agreement is reached within forty-eight (48) hours, the matter shall be referred to

(e) A representative of the International Union, a representative of the Company, and the necessary grievance committeemen.

(f) Any grievance which involees the interpretation or application of this agreement and which remains unsettled after having been fully processed in accordance with the provisions of section (a), (b), (c), (d), and

(e) of this paragraph may be submitted to arbitration upon request of either the Union or the Company provided such request is made within ten (10) days after the final meeting of parties to this agreement provided for in section (e).

37. The following procedures shall be used in handling arbitration cases:

(a) The Company shall appoint one representative and the Union shall appoint one representative to act as

official spokesmen and to present the oral arguments and/or written briefs for their respective organizations in the arbitration proceedings.

(b) These two representatives shall mutually agree upon the selection of an impartial arbitrator from a list of arbitrators suggested by the Federal Mediation & Conciliation Service.

(c) The arbitrator selected shall act as the sole arbitrator in the proceedings.

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(d) The arbitration proceedings shall take place in the Company's offices at a time mutually agreed upon by the impartial arbitrator and the representatives of the Company and the Union who are to present the case. Arbitration proceedings may be held at locations other than the Company's offices if such change of location is mutually agreed upon by the parties involved.

(e) The Company representative and the Union representative who are to present the arguments for their respective organizations, may have present with them at the arbitration proceedings such witnesses and assistants as they deem necessary to the development and presentation of the facts in the dispute.

(f) It is recognized by both parties to this agreement that such arbitration proceedings must be conducted in an atmosphere of dignity and decorum. Witnesses, and those assisting in the presentation of the various arguments, must be properly recognized by the arbitrator

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or the official representatives representing the Company or the Union, before they may actively participate in such presentations or oral arguments.

(g) The impartial arbitrator at the start of the arbitration proceedings, shall place in writing a description of the issue or issues involved, and this subject of arbitration shall first be agreed upon by the parties before their arguments are presented.

(h) It shall be the prerogative of the parties to this agreement to determine whether or not written briefs are to be submitted to the arbitrator. In the event it is determined to submit briefs, they shall be exchanged by the parties at least five days prior to the date of the oral hearing.

(i) The aggrieved parties shall be the first to present its case to the impartial arbitrator.

(j) A reporter or stenographer to take verbatim statements during the arbitration hearing may be permitted to attend upon the request of either party to this agree-

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ment.

(k) The fees and expenses of the impartial arbitrator shall be equally shared by the Company and the Union.

(l) The award of the impartial arbitrator shall not be published nor made public unless mutually agreed to by the representatives of both the Company and the Union.

(m) The award of the sole impartial arbitrator shall be in writing and identical copies shall be sent to both parties to this agreement. Oral awards shall be made only when mutually agreed upon by both parties.

(n) The award of the arbitrator shall be immediately final and binding upon all parties to this agreement.

38. Grievance Committeemen will be afforded such time off without pay as may be required to:

(a) Attend grievance meetings.

(b) Visit departments other than their own at all reasonable times for the purpose of transacting the legitimate

business of the grievance committee after notice to the head of the department to be visited and permission from their own department head, or his designated representative.

39. Any grievance which has not been placed in writing and submitted within ten (10) working days after the date on which it occurred shall become null and void and need not be recognized by either party to this agreement.

Section 7—Seniority

40. New employees will be considered to be probationary employees until they have worked thirty (30) working days, and during the probationary period, they will be entitled to no seniority list as of the date of hiring in the Test Department. There shall be no responsibility for the reemployment of temporary employees if they are laid off or discharged during this period. The retention or rejection of probationary employees shall be at the discretion of the employer.

LAYOFFS

41. When layoffs are to be of an indefinite nature, the following procedure shall apply:

(a) All probationary employees shall be laid off providing there are employees with seniority who are willing to do the work of the probationary employees who are to be laid off.

(b) Thereafter, any further layoffs shall be based on the overall Test Department seniority and ability to perform the work available.

(c) The Company and the Union agree that during times of indefinite layoff, an apprentice having seniority may replace other apprentices in the same classification or lower. An apprentice shall not, however, be permitted to replace a qualified man of lesser seniority in the same classification.

(d) Employees who are demoted but not laid off during layoff of an indefinite nature shall receive their regularly earned hourly rate of pay for the first thirty (30) days following their demotion. After the thirty (30)

day period of rate protection, the employee will then have a right to exercise his overall Test Department seniority in accordance with Section 7, under Layoff, paragraphs (a), (b), and (c). The thirty (30) day protection of rate shall begin as of the last day worked in his highest classified rate of pay. The employees agree to accept such assignments that the Company may find available during the thirty (30) day period of rate protection. An employee will not be asked to work in a higher classified job than the one he had been demoted from unless he is paid the higher rate of pay.

42. During times of indefinite layoffs or while the plant is working short time (under forty hours), no new help shall be employed except on jobs which are of such a nature that the work cannot be performed by laid-off employees, or existing employees. In the event that the Company should hire a new employee during the lay-off or short-time period, laid-off employees who believe themselves capable of performing the work to be done by the new employee shall have the right to file a griev-

ance in the third step of the grievance procedure. Laid-off employees shall be recalled according to their seniority.

43. Employees who have received special instructions on any order shall not be laid off until such order has been completed. It shall be understood that in no case shall this provision be used to exclude from work an employee with seniority who is capable of performing the required work on the job in question.

(a) When there are any classified jobs within a division, which can be filled from among the existing employees, recognition shall be given to a progression system and the position shall be filled by the person "next in line" in that division, if he has the qualifications to learn the work and has seniority over others who may have similar ability.

(b) Should an opening exist in a division where the classified jobs below that opening are not filled, then the job shall be open to the overall Test Department, and filled following the same procedure as explained in Clause (a) above.

(c) The person selected shall have thirty (30) working days to determine whether he wishes to retain the position he is selected for, or return to his former job; and the Company shall have thirty (30) working days to determine whether or not they desire to retain him in that position. Unless previously experienced, the employee next in line shall receive the starting rate on the new job.

44. The Company shall provide the Union with a copy of a list listing the employees according to their hiring date. This list shall be revised from time to time but shall not exceed one revision every three months.

45. The following rules shall govern the termination of seniority.

(a) Seniority shall accumulate during layoff if the layoff period is less than twenty-four (24) months. Em-

ployment shall terminate at the end of twenty-four (24) months. Employees who have been laid off for a period exceeding one year shall be required to take a physical examination. Such examination shall not

be used as a condition of employment.

Any employee injured on duty shall accumulate credit for continuous service until the termination of the period for which statutory compensation is payable, provided such employee is returned to work within thirty (30) days after his final payment of statutory compensation for such disability.

(b) Resignation of an employee.

(c) Discharge of an employee for good cause.

(d) Failure to report within five (5) working days when recalled from layoff by registered mail notice to the employee's last address with employment office.

(e) Failure to report for work at conclusion of leave of absence.

46. Whenever a general layoff or reduction in forces is about to take place, a notice shall be posted on the bulletin board outlining the approximate number of employees to be laid off.

This notice shall be posted for forty-eight (48) hours before such layoffs begin.

47. Test Department employees, who, after the inception of Local 4561, are promoted to supervisory positions in the Test Department shall be permitted to return to their former positions in the Test Department at the going rate of pay with full accumulated seniority, when their services as supervisors are no longer required.

48. Test Department employees who, after the inception of Local 4561, are promoted or transferred to positions outside the bargaining unit (other than supervisory positions in the Test Department) shall be permitted to return to their former positions, or to such positions as their seniority may warrant in the Test Department at the going rate of pay with arrested seniority, i.e., whatever seniority they had at the time they left the bargaining unit.

49. To protect his seniority, it is the employee's responsibility to keep the Personnel Office informed of his proper address.

50. The Union agrees to provide the Company with a list showing the names of all stewards, grievance committeemen, and

officers of the Union and their respective departments upon request. The Company shall provide the Union with a list of all foremen and their respective departments upon request.

Section 8—Management Prerogatives

51. The management of the factory, the control of the method, process and means of production, the scheduling of production, the direction of the working forces, the right to hire, suspend, layoff, transfer, or discharge for justifiable cause, and the right to exercise justifiable discipline to insure the efficient and economical operation of the plant are vested exclusively in the Company. The uniform application of penalties governing justifiable discipline shall be subject to review by both the Management and the Union.

52. It is understood and agreed that this clause shall not be used to discriminate against any employee covered by this agreement.

Section 9—Vacations

53. (a) All employees in the employ of the Company for

one year but less than ten years shall receive two weeks' vacation with eighty (80) hours' pay.

(b) Employees with ten years' service, but less than fifteen years' service, shall receive two weeks' vacation with ninety-six (96) hours' pay.

(c) Employees with fifteen years or more service shall receive three weeks' vacation and one hundred twenty (120) hours' pay. Two weeks of this vacation shall be taken at the regular vacation period and the third week shall be taken at the employee's option.

54. Employees who resign or are discharged for good cause prior to their vacation will not be entitled to vacation or vacation pay. The beneficiaries of deceased employees, however, shall receive a proportionate share of whatever vacation pay has been earned up to the time of his or her death.

55. Eligible employees who are laid off and recalled will receive their vacation pay provided they have worked at least forty (40) weeks since July 1, 1954, or July 1, 1955, or July 1, 1956.

56. It is understood that the vacation season shall run from

May 17, 1955 to December 31, 1955, from May 14, 1956 to December 31, 1956, and from May 13, 1957 to December 31, 1957.

57. (a) Discharged Servicemen who have returned will receive their vacation pay provided they have worked at least sixty (60) days prior to the vacation period.

(b) Any employee who has completed one year's service with the Company and who is drafted or enlists into the armed forces of our nation while our nation is at war or in a state of national emergency, shall receive one hundred dollars military bonus from the Company upon leaving to enter such armed forces.

58. The employer agrees to pay to the employees whose attendance is required as jurors before the Court of the Nation, State, or County, the difference between their dayrate and the legal fee allowed for such attendance.

Section 10—Termination of Employment

59. Discharge may be made subject to cause only, and all discharges are subject to review by the Union and the Manage-

ment under the grievance procedure outlined herein.

60. Any employee who is found to have been discharged without just cause shall be reinstated with full rights and reimbursed for all time lost at double his or her regular rate of pay, provided he or she filed a grievance within three (3) working days of the time of the discharge. It will be possible, however, for both parties, namely, the Union and the Management, to agree to reinstate any discharged employee without payment of back wages. The Company, whenever possible, shall give to the employee and the Union written advance notice of any complaint concerning any employee whose work or conduct is unsatisfactory.

61. By mutual agreement of the parties, an employee shall, on his written request, be granted a leave of absence for legitimate personal reasons without pay for a period not to exceed thirty (30) days. An additional period of thirty (30) days shall be extended where necessary on approval of the Company and the Union.

62. An employee who, while on leave of absence, engaged

in other employment without consent or fails to report for work on or before the expiration of his leave shall be considered to have quit without notice. If and when such employee is rehired

by the Company, he shall have lost his seniority rights acquired by previous employment.

Section 11—No Strikes, No Lockouts

63. The Union agrees that there shall be no strikes, work stoppages, interruptions to or impeding of work for the duration of this agreement. No officer of Local 4561 or representative of the Union shall authorize, instigate, aid or condone any such activities, nor shall any employee participate in or instigate such activities.

64. The applicable procedures of this contract shall be followed for the settlement of all grievances.

65. There shall be no lockouts during the life of this agreement.

Section 12—General Clauses

66. The Union agrees to adhere to the principle of a fair day's work for a fair day's pay and that it will use its best efforts

in behalf of the Company to insure efficient and continuous production.

67. The Company and the Union will cooperate to eliminate accidents and health hazards. The Company shall continue to make reasonable provisions for the safety and health of its employees at the plant during the hours of their employment.

68. With the exception of safety-toe shoes; protective devices, wearing apparel and other equipment necessary to properly protect employees from injury shall be provided by the Company, such as goggles; gas-masks; face shields, respirators and special purpose gloves. Fire-proof, or acid-proof protective clothing when necessary and when required shall be provided by the Company without cost, except that the Company may assess a fair charge to cover loss of wilful destruction thereof by the employee. Proper heating and ventilating systems shall be in-

stalled where needed. The Company shall provide coveralls for the testers. The testers shall wear these overalls at all times unless they are soiled to the extent that they cannot be worn.

69. If an employee is assigned to perform work which he sincerely believes to be unsafe or unhealthy to a degree above and beyond the normal hazards inherent in the operation in question, he may be permitted to relieve himself from the job without loss to his right to return to such job, and shall be assigned in such other employment as may be available in the Test Department, and shall request his foreman to call an immediate meeting of the Union's Safety Committee and the Company's Safety Committee to investigate and review the condition in question.

70. The Committee shall then render a decision as to whether or not the job is unsafe or unhealthy to a degree above and beyond the normal hazards inherent in the operation in question. If the condition is declared unsafe, the employee shall be compensated in full for any time lost. If it is declared to be safe, he shall not be compensated for any time lost.

71. Should the Safety Committee be unable to agree on a disposition within twenty-four hours, the question in dispute shall be referred to an impartial umpire selected by alphabetical se-

quence from a list of six impartial safety umpires previously agreed upon by the Company and the Union.

72. Any employee who believes that his or her health is being impaired due to the nature of his or her employment in the plant may report to the First Aid Department and request a physical examination, and he or she shall promptly be referred to the plant physician, or a physician of his or her choice, and, in the event any illness or disability is found to be due to the nature of the work performed by the employee, the Company

shall assume the expenses of such examination and treatments.

73. A safety committee consisting of not more than three (3) people designated by the Union and not more than three (3) people designated by the Company shall be established in the Test Department. The Safety Committee shall hold monthly meetings at times determined by the Committee. Time consumed on Committee work by Committee members designated by the Union shall be considered hours worked to be compensated by the Company. The function of the Safety Committee shall be to advise with plant management concerning safety and health

matters but not to handle grievances. In the discharge of its function, the Safety Committee shall formulate suggested changes in existing practices and rules and recommend adoption of new practices and rules. Advices of the Safety Committee, together with supporting suggestions, recommendations and reasons, shall be submitted to the Company representative for his consideration and for such action as he may consider consistent with the Company's responsibility to provide for the safety and health of its employees during the hours of their employment.

74. Foremen shall not perform testing operations on production work unless such work must necessarily be done to instruct classified men how to do the work. Experimental and Test Department maintenance work shall be conducted in the same manner in the future as it has been done in the past.

75. The Company will permit the Union to use the Company's bulletin boards for posting of Union notices of a noncontroversial nature. Such posting will be made by Union Representatives and notices will be submitted to Company Representative for review before such posting is effected.

76. Employees with seniority entering the armed services of the United States shall, upon their return, be restored to their former jobs according to the regulations (governmental) in effect at the time of his return.

77. The Company will pay up to two (2) days' wages for time lost due to deaths in the immediate family. This benefit will be paid to those employees who have been with the Company one (1) year or more and would be payable in the case of the death of a mother, father, sister, brother, husband, wife, or children.

78. Trainees for management positions with the Company shall receive training in various production and Test Departments of the factory. Both parties to this agreement recognize the desirability of such training and encourage the highest possible degree of cooperation between their respective representatives in carrying out the program to a successful conclusion.

The conditions governing this program shall be as follows:

(a) Trainees shall be limited in number. The number of

trainees in training at any one time shall not exceed ten percent (10%) of the number of testers.

(b) After trainees are selected by the Company, they shall be placed on the salaried payroll and shall not become members of the Union during such training period. They shall have no seniority and their retention or rejection as trainees shall be at the discretion of the Company.

(c) It is agreed that no Union member on production work shall be deprived of his classified job by any trainee.

(d) Trainees shall be permitted to do production work and act as observers in such departments of the factory as the Company considers to be necessary to their training program.

(e) The training time for each trainee shall consist of a total of ten (10) calendar weeks.

79. In the event of any work stoppage or strike by the members of Local 4561, all necessary employees incidental to

the operations of the boiler house, water works, and other service operations shall be permitted to perform such operations without restraint.

Section 13—Termination of Contract

80. (a) This agreement shall become effective as of December 17, 1954, and shall continue in effect up to and including midnight of December 16, 1957. Provided, however, that the agreement of the parties upon hourly rates of pay shall terminate as of midnight, December 16, 1956, if either party gives notice to the other party pursuant to "paragraph (c) of this section 13."

(b) Either party may on or before October 16, 1957, give notice to the other party of the desire of the party giving such notice to negotiate with respect to the terms and conditions of a new agreement. If such notice is given, the parties shall meet within 30 days after October 16, 1957, to negotiate with respect to such matter.

(c) Either party may on or before October 16, 1956, give notice to the other party of the desire of the party giving such

notice to negotiate with respect to hourly rates of pay and guaranteed annual wage to be effective after December 16, 1956. If such notice is given, the parties shall meet within 30 days after October 16, 1956, to negotiate with respect to such matters. After the giving of such notice and before the parties shall reach an agreement on such matters, (and during the period of any strike or lockout which may begin as permitted

by the provisions of this paragraph), neither party shall request the other party to bargain or continue to bargain with respect to any other matters and neither party shall have any obligation to negotiate or bargain with the other party with respect to any such matters. If the parties shall not agree with respect to such matters by midnight of December 16, 1956, then either party may thereafter resort to strike or lockout, as the case may be, in support of its position in respect of such matters, and the agreement hereinabove set forth shall thereupon be terminated.

(d) It is separately agreed, however, that upon settlement of such matters, all terms of this agreement shall be reinstated except that there shall be added to and incorporated in this

agreement such additional provisions as shall have been agreed to with respect to hourly rates of pay and guaranteed annual wages only, and no others and such agreement, as so reinstated and modified, shall hereafter continue in effect up to and including midnight of December 16, 1957, and thereafter it will be automatically renewed unless either party gives the other written notice by registered mail thirty (30) days prior to the expiration of the agreement that it proposes certain changes therein. Any notice to be given under this agreement shall be given by registered mail; be completed by and at the time of mailing; and, if by the Company, be addressed to the United Steelworkers of America, Commonwealth Building, Pittsburgh, and if by the Union, to Pennsylvania. Either party may, by like written notice, change the address to which registered mail notice to it shall be given.

APPENDIX "A"

Job Class 1	2.39½
Job Class 2	2.27
Job Class 3	2.14½
Job Class 4	2.02
Job Class 5	1.89½
Job Class 6	1.77
Starting rate for employees hired after December 16, 1954	1.59½

81. Effective December 17, 1955, an additional five cents (5¢) per hour be added to each classification and starting rate.

82. It is agreed by the parties hereto that an automatic progression program consisting of an eighteen month apprenticeship shall be placed in effect for such employees who begin at the starting rate and progress to qualified Class 5 Testers. An automatic progression program consisting of an eighteen month apprenticeship shall also be placed in effect for Apprentice Class 4 Testers to become qualified Class 3 Testers.

83. In witness whereof, the authorized representatives of both parties have placed their signatures this 14th day of December, 1954.

For The International:
David J. McDonald
James C. Thimmes
I. W. Abel
Eugene Maurice
Guy S. Miller

For Local 4561:
Daniel T. Prystash
Charles W. Lupka

John F. Lenhart Jr.
Roland Checca

For The Company:
F. L. Huber
Earl H. Rodgers
W. L. Williams

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LABOR AGREEMENT

between

PENNSYLVANIA TRANSFORMER COMPANY
(A McGraw Electric Company Division)

and the

UNITED STEELWORKERS OF AMERICA

On Behalf of

LOCAL 3968

Effective December 5, 1956

Expires December 6, 1959

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HELLO!

Your Company and your Union take pride in presenting you with this copy of our labor agreement. Both of us are indeed pleased to welcome you to the fine group of men and women who make up our organization. We urge you to read this agreement carefully so that you may be completely aware of

your benefits and responsibilities. We hope you will cooperate with us in carrying out the intent and purpose of this agreement as outlined in Section 1, and you will help us in every way you can to make our relationship as healthful, pleasant and profitable as possible.

For The Company:
F. L. Huber

For The Steelworkers:
Emil Dorchak
President, Local 3968

LABOR AGREEMENT

1. This agreement dated the 5th day of December 1956, is between the PennsylvaniaTransformer Company, A McGraw Electric Company Division, hereinafter referred to as the Company and the United Steelworkers of America, on behalf of Local No. 3968, hereinafter referred to as the Union.

Section 1—Purpose and Intent of the Parties

2. The purpose of the Company and the Union in entering into this labor contract is to set forth their agreement on rates of pay, hours of work and other conditions of employment so as to promote orderly and peaceful relations with the employees, and to achieve uninterrupted operations in the plant.

3. The Company and the Union encourage the highest possible degree of friendly cooperative relationships between their respective representatives at all levels and with and between all employees. The officers of the Company and the Union realize that this goal depends on more than words in a labor agreement; that it depends primarily on attitudes between

people in their respective organizations and at all levels of responsibility. They believe that proper attitudes must be based

on full understanding of and regard for the respective rights and responsibilities of both the Company and the Union. They believe also that proper attitudes are of major importance in the local plant where day-to-day operations and administration of the labor agreement demand fairness and understanding.

4. They believe that these attitudes can be encouraged best when it is made clear that Company and Union officials, whose duties involved negotiation of the labor agreement, are not anti-union, or anti-company, but are sincerely concerned with the best interest and well-being of the Company and all employees. Accordingly, the Company and the Union as evidence of attitude and intent, have agreed that during the life of this agreement, officials of their respective organizations shall meet from time to time for the purpose of appraising the problems, if any, which have arisen in the application, administration and interpretation of this agreement and which may be interfering with the attainment of their joint objective as set forth above. Such meetings shall not be for the purpose of conducting continuing collective

bargaining negotiations, nor to in any way modify, add to, or detract from the provisions of this agreement.

5. By such an arrangement, the parties are affording concrete evidence of a sincere attempt to accomplish the goal of cooperative good industrial relations and of their purpose to find ways to overcome difficulties or influences interfering with the attainment of their goal.

6. By such arrangement, the parties believe that, they, as men of good will with sound purpose, may best protect private enterprise and its efficiency in the interest of all, as well as the legitimate interest of their respective organizations within the framework of a democratic society in which regard for fact and fairness is essential.

Section 2—Recognition

7. The Company recognizes the Union as the exclusive bargaining representative of all production and maintenance employees of the Company, except for salaried employees, nurses, transformer testers, watchmen, guards, and all supervisory employees with authority to hire, promote, discharge, discipline or

otherwise effect changes in the status of employees or effectively recommend such action.

8. It shall be a continuing condition of employment with the Company that all employees covered by this agreement, both present and new employees, with the exception of those listed in Section 2, paragraph 7 of this agreement, shall be and remain good standing members of the Union. New employees shall become members after they have worked thirty working days.

9. The Company shall deduct from their wages and turn over to the proper officers of the Union, the union dues, initiation fees and assessments of such members of the Union as individually and voluntarily certify in writing that they authorize such deductions.

10. The Company, for said employees, shall deduct from the first pay of each month, the union dues for the preceding month and promptly remit the same to the International Secretary-Treasurer of the Union.

11. The Company shall continue to deduct dues at the rate in force at the present time until officially notified of a change as provided below.

12. The sole authorized representative of the Union for the purpose of certifying the amount of any change in monthly dues or initiation fees to be deducted by the Company shall be the International Secretary-Treasurer.

Section 3—Hours of Work and Overtime

13. The normal hours of work shall be eight (8) per day and forty (40) per week, however, it is recognized by both parties to this agreement that there are times or occasions when overtime work must necessarily be scheduled by management and it is agreed that management shall determine the number of hours to be so worked. There shall be no concerted refusals by groups of employees to work such overtime hours. An individual employee shall have the right to refuse overtime work if he has a justifiable reason.

14. The Company agrees to instruct all of its foremen that they should endeavor to advise all employees who are to work overtime that such overtime is to be worked at least two (2) hours before the end of the shift. It is recognized that emergen-

cies may arise when such two hours' advanced notice might not always be possible.

15. Time and one-half shall be paid for all hours in excess of eight (8) in any one work day, or forty (40) in any one work week. Time and one half shall be paid for Saturday as such and double time for Sunday as such except for jobs which are on a continuous basis as listed below:

(a) All Service Department employees engaged in occupations connected with the operation of the boiler house, water works, real estate, etc.

16. For the groups engaged in continuous process operations as listed above, time and one-half shall be paid for all hours in excess of eight (8) in any one work day and forty (40) in any one work week and for all work performed on a sixth consecutive work day. Time and one half shall not be paid for Saturday as such.

17. Double time shall be paid for work performed on the seventh consecutive work day. Double time shall not be paid for Sunday as such.

18. For all hours worked on Sunday by employees in a continuous process department which are not paid for on an overtime

basis, a premium based on the hourly rate shall be paid as follows:

(a) One and one-tenth times the employee's hourly rate of pay from December 5, 1956 to December 4, 1957 inclusive.

(b) One and one-fifth times the employee's hourly rate of pay from December 5, 1957 to December 31, 1958 inclusive.

(c) One and one-fourth times the employee's hourly rate of pay after December 31, 1958.

For the purpose of this provision, Sunday shall be deemed to be the tweny-four (24) hours beginning at 8:00 A.M., Sunday morning and ending at 8:00 A.M., Monday morning.

19. Employees engaged in continuous process work involving the split work week shall not be eligible for the change-of-shift bonus as outlined in the labor agreement unless such a change occurs during their own particular work week.

20. Piecework employees, when working overtime on piecework jobs, shall be paid based upon the piecework rate of the particular job upon which the overtime is worked. It is agreed that the normal work week shall be Monday through Friday inclusive. The normal work day shall be from 8:00 A. M., on one day to 8:00 A. M., the following day.

21. All hours worked in excess of twelve (12) hours in any one day shall be paid for at double time.

22. Overtime hours shall be equalized among all employees within a classified group of workers in a department performing the same type of work. The Department Foreman shall keep an overtime chart for this purpose. The chart shall be reviewed once

a month by the Department Foreman and the Department Steward. Any inequalities determined at this review will be corrected the following month. Overtime refused shall be considered as overtime worked for purposes of equalization. This overtime cycle shall be determined on a seniority basis beginning with the senior employee and finishing with the youngest employee.

Section 4—Holidays

23. The Company shall observe the following holidays: New

Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas.

24. Payment for unworked holidays shall be made as follows: Dayworkers shall be paid eight (8) hours at their classified dayrate.

Pieceworkers shall be paid eight (8) hours at the average rate of pay which they earned during the pay period preceding the pay period in which the holidy occurs.

25. Payment to those who work on holidays shall be made as follows:

Dayworkers and pieceworkers shall be paid at time and one half their earnings while working the holiday, in addition to their holiday pay.

26. Payment for unworked holidays shall be paid regardless of which day of the week they shall occur.

27. Only those employees who have worked thirty (30) working days with the Company prior to the holiday shall be paid for holidays that are not worked.

28. Payment for unworked holidays shall be made only to

those hourly paid employees who have earned some wages during the week in which the holiday occurs.

29. Employees who are laid off shall be eligible for holiday pay for a period of thirty (30) days from the day of layoff.

Shift Differential

30. The Company will pay a shift differential of ten cents (10¢) per hour to all employees working on the second and third shifts beginning December 5, 1956.

31. Effective December 5, 1957, the shift differential shall become twelve cents (12¢) per hour.

Change of Shift Bonus

32. The Company shall pay two (2) hours at the employee's regular dayrate to anyone who is requested to change shifts during the work week for the Company's convenience. Such bonus shall not be paid if the change is made over the weekend.

Male Replacement by Female

33. Women employed to perform work on jobs previously

established as men's jobs, shall receive the same pay for fully performing the same quality, quantity and type of work.

Call in Pay

34. Every employee who is called in to work, or any employee who reports to work and had not been told not to so report shall receive not less than four (4) hours work at his regular occupation, or a comparable one, and shall receive his regular rate of pay therefor; or not less than four (4) hours pay at the discretion of the Company. The Company shall not be held liable, however, for reasons beyond its control.

Section 5—Wages and Insurance

35. Effective December 5, 1956, the Company shall place in effect the attached wage schedule, Exhibit "C" (this schedule

includes a Dayrate increase of ten cents (10¢) per hour and an Incentive Base increase of eight cents (8¢) per hour effective 12-5-56. Dayrate increase of eight cents (8¢) per hour and an Incentive Base increase of six cents (6¢) per hour effective 12-5-57. A Dayrate increase of eight cents (8¢) per hour and

an Incentive Base increase of six cents (6¢) per hour effective 1-1-59).

36. The rates and classifications now in effect with the modifications outlined above shall remain in effect for the duration of this agreement unless a very definite and substantial change in the elements of the job justify a re-classification.

37. The Company shall contribute five cents (5¢) per man hour to be used to provide a Hospital-Medical-Surgical Plan for all employees. This sum shall be based on 2040 hours per year. Any future increases in the cost of the Plan will be shared by the employees and the Company.

38. The Company shall place in effect an Insurance Program whereby each employee who has worked thirty (30) working days shall be insured for $4500.00 Life Insurance plus an additional $4500.00 Accidental Death and Dismemberment Benefit.

39. The Company shall pay the cost to provide a Sickness & Accident Policy which will provide to the employees $46.50 per week for time lost due to accidents (which are not compensable

under Workmen's Compensation) and sickness. Accident benefits shall begin with the first day and sickness benefits, with the eighth day.

40. The Company shall pay the cost to provide a plan which will pay the employees who are injured as a result of their employment, the difference between $46.50 per week and the amount received under Workmen's Compensation payments. Accidents will be compensable beginning with the first day.

Section 6—Cost of Living Adjustment

41. The Union and the Company agree to adjust wages in accordance with the Consumer Price Index of the Bureau of Labor Statistics, United States Department of Labor (1947-1949=100), hereafter referred to as the BLS Consumer Price Index. The November 1956 Index level shall be used as the base figure.

42. Changes in any adjustment shall be made, if appropriate, only commencing with the first pay period beginning on or after each January 1st and July 1st, beginning July 1, 1957 and shall be based on the first published BLS Consumer Price Index as of the prior November 15 and May 15 respectively.

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43. Adjustments if required in accordance with the Table outlined herein shall be made only at six month intervals. For example, if no increase is appropriate on July 1, 1957 then no further review shall be made until January 1, 1958. Comparisons will be deferred for periods of six months until an increase over the November Index minimum shall appear.

44. The amount of the cost-of-living adjustment in effect at anytime will be included in computing overtime premium pay, vacation payments, holiday payments, and call-in pay in the same manner as other monies which are part of the worker's straight time earnings.

45. Notwithstanding any decrease in the BLS Consumer Price Index, there shall not be any decrease in any existing cost-of-living adjustment in accordance with the following table unless the amount of the decrease in the adjustment under such table is at least two cents (2¢), at which time the full amount of the appropriate decrease shall be made.

46. The initial cost-of-living adjustment and the semi-annual upward or downward adjustments thereafter to such cost-of-living adjustment shall be governed by the following table:

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BLS Consumer Price Index	Total Living Cost Allowance
November 1956 index plus 0.3 points or any lower index	None
November 1956 index plus 0.4 points to 0.9 points inclusive	1¢ per hr.
November 1956 index plus 1.0 points to 1.4 points inclusive	2¢ per hr.
November 1956 index plus 1.5 points to 1.9 points inclusive	3¢ per hr.
November 1956 index plus 2.0 points to 2.4 points inclusive	4¢ per hr.

and so forth, with one cent (1¢) change in the adjustment for each 0.4 point or 0.5 point change in the Index, whichever is appropriate, based on the sequence of changes set forth in the above table.

47. In the event the BLS Index becomes calculated on a basis different from its present basis so as to require a change in this cost-of-living adjustment plan, then this cost-of-living adjustment plan will be modified so as to operate within its original intent.

EXAMPLE

48. Examples showing how the cost-of-living provisions would work:

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Change in Cost-of-living in cents in Accordance with Table	Amount of Cost-of-living Adjustment
+ 4¢	4¢
+ 3¢	7¢
— 2¢	5¢
— 1¢	5¢

− 1¢	3¢
+ 2¢	5¢
− 1¢	5¢
+ 1¢	5¢
− 1¢	5¢
+ 2¢	6¢
− 3¢	3¢
− 1¢	3¢
− 1¢	1¢
− 3¢	0
+ 2¢	0

Section 7—Grievance

49. It is mutually agreed that all grievances which arise in any department covered by this agreement shall be adjusted in the following manner:

(a) The aggrieved employee shall discuss his complaint verbally with the foreman and, if no adjustment is reached, then

(b) A discussion shall be held between the foreman, the department steward, and the aggrieved employee. If no satisfactory settlement is reached after this verbal discussion, the grievance shall be placed in writing by the department steward and shall be referred to the department foreman. If no satisfactory settlement is arrived at within eight (8) hours after the written grievance has been presented to the foreman, the matter shall be referred within forty-eight (48) hours to

(c) The Zone Committeeman and the Company representative. In the event a satisfactory settlement is not reached in twenty-four (24) hours, the matter shall be referred within seventy-two (72) hours to

(d) The General Grievance Committee and the Company Representative. If no agreement is reached within forty-eight (48) hours, the matter shall be referred to

(e) A representative of the International Union, a repre-

sentative of the Company, and the necessary grievance committeemen.

(f) Any grievance (with the exception of those relating to Paragraphs 98 and 99) which involves the interpretation or application of this agreement and which remains unsettled after having been fully processed in accordance with the provisions of section (a), (b), (c), (d), and (e) of this paragraph may be submitted to arbitration upon request of either the Union or the Company provided such request is made within ten (10) days after the final meeting of parties to this agreement provided for in section (e).

50. The following procedures shall be used in handling arbitration cases:

(a) The Company shall appoint one representative and the Union shall appoint one representative to act as official spokesemen and to present the oral arguments and/or written briefs for their respective organizations in the arbitration proceedings.

(b) These two representatives shall mutually agree upon

the selection of an impartial arbitrator from a list of arbitrators suggested by the Federal Mediation & Conciliation Service.

(c) The arbitrator selected shall act as the sole arbitrator in the proceedings.

(d) The arbitration proceedings shall take place in the company's offices at a time mutually agreed upon by the impartial arbitrator and the representatives of the Company and the Union who are to present the case. Arbitration proceedings may be held at locations other than the company's offices if such change of location is mutually agreed upon by the parties involved.

(e) The company representative and the union representative who are to present the arguments for their respective organizations, may have present with them at the arbitration proceedings such witnesses and assistants as they deem necessary to the development and presentation of the facts in the dispute.

(f) It is recognized by both parties to this agreement that such arbitration proceedings must be conducted in an atmosphere of dignity and decorum. Witnesses, and those assisting in the presentation of the various arguments, must be properly recognized by the arbitrator or the official representatives representing the company or the union, before they may actively participate in such presentations or oral arguments.

(g) The impartial arbitrator, at the start of the arbitration proceedings, shall place in writing a decription of the issue or issues involved, and this subject of arbitration shall first be agreed upon by the parties before their arguments are presented.

(h) It shall be the prerogative of the parties to this agreement to determine whether or not written briefs are to be submitted to the arbitrator. In the event it is determined to submit briefs, they shall be exchanged by the parties, at least five days prior to the date of the oral hearing.

(i) The aggrieved parties shall be the first to present its case to the impartial arbitrator.

(j) A reporter or stenographer to take verbatim statements during the arbitration hearing may be permitted to attend upon the request of either party to this agreement.

(k) The impartial arbitrator shall not be authorized to subtract from nor add to the provisions of the Labor Agreement, nor alter it in any way.

(l) The fees and expenses of the impartial arbitrator shall be equally shared by the company and the union.

(m) The award of the impartial arbitrator shall not be published nor made public unless mutually agreed to by the representatives of both the company and the union.

(n) The award of the sole impartial arbitrator shall be in writing and identical copies shall be sent to both parties to this agreement. Oral awards shall be made only

when mutually agreed upon by both parties.

(o) The award of the arbitrator shall be immediately final and binding upon all parties to this agreement.

51. Grievance Committeemen will be afforded such time off without pay as may be required to:

(a) Attend grievance meetings.

(b) Visit departments other than their own at all reasonable times for the purpose of transacting the legitimate business of the grievance committee after notice to the head of the department to be visited and permission from their own department head, or his designated representative.

52. Any grievance which has not been placed in writing and submitted within ten (10) days after the date on which it oc-

curred shall become null and void and need not be recognized by either party to this agreement.

Section 8—Seniority

53. New employees will be considered to be probationary

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employees until they have worked thirty (30) working days, and during the probationary period, they will be entitled to no seniority. At the end of the probationary period, each employee will be entered on the seniority list as of the date of hiring. There shall be no responsibility for the reemployment of temporary employees if they are laid off or discharged during this period, The retention or rejection of probationary employees shall be at the discretion of the employer.

TEMPORARY LAYOFFS

54. Temporary layoffs shall be handled in the following manner:

(a) When work temporarily slackens in any department, the employees in the department for whom no work is available shall be given the choice of being laid off for a period of three (3) days or of replacing employees in the labor pool who have less seniority.

(b) After the three day period of layoff or labor pool work, a senior employee may then temporarily replace other employees in other departments who have less

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seniority providing,

If he is physically capable, he shall be permitted to replace younger employees without having had any previous experience or training on the following jobs only:

Janitor & Sweeper
Laborer
Stick Sander
Spacer Gluer
Storeroom Clerk
Tank Cleaner, Large Tank Shop
Assembler, Bushing, Small Roller Helper, Large Tanks
Shearplate Helper
Grinder, Tank Test
Painter's Helper
Spacer Puncher
Storeroom Helper
Carpenter's Helper
Framer
Gasket Maker
Insulation Cutter—Winding
Shotblast Helper, Int. & Large
Tester, Small Tank Shop
Reamer & Expander
Winder's Helper
Crane Runner

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Welder's Helper—Inter. Tank Shop
Basket Loader
Radiator Tester
Ring Former—Intermediate

(c) A senior employee shall not be permitted to replace younger employees in jobs other than those listed above under (b) unless he can satisfactorily prove that he has had experience and training to produce a like quality and quantity of work as that being produced by the employee he is going to replace.

INDEFINITE LAYOFFS

55. When layoffs are to be of an indefinite nature exceeding three days or when there is to be a general reduction in forces, the following procedure shall apply:

(a) All probationary employees shall be laid off providing there are employees with seniority who are willing to do the work of the probationary employees who are to be laid off.

(b) After the three day period of layoff or labor pool work,

a senior employee may then temporarily replace other employees in other departments who have less seniority providing,

If he is physically capable, he shall be permitted to replace younger employees without having had any previous experience or training on the following jobs only:

Janitor & Sweeper
Laborer
Stick Sander
Spacer Gluer
Storeroom Clerk
Tank Cleaner, Large Tank Shop
Assembler, Bushing, Small
Roller Helper, Large Tanks
Shearplate Helper
Grinder, Tank Test
Painter's Helper
Spacer Puncher
Storeroom Helper
Carpenter's Helper
Framer
Gasket Maker

Insulation Cutter—Winding
Shotblast Helper, Int. & Large
Tester, Small Tank Shop
Reamer & Expander
Winder's Helper

Crane Runner
Welder's Helper—Inter. Tank Shop
Basket Loader
Radiator Tester
Ring Former—Intermediate

(c) A senior employee shall not be permitted to replace younger employees in jobs other than those listed above under (b) unless he can satisfactorily prove that he has had experience and training to produce a like quality and quantity of work as that being produced by the employee he is going to replace.

56. The Company agrees that when a general layoff has taken place, it will review the list with the president and chairman of the grievance committee so that the union may be advised concerning the identity of the employees laid off or retained.

57. During times of indefinite layoffs or while the plant is working short time (under 40 hours), no new help shall be employed except on jobs which are of such a nature that the work cannot be performed by laid-off employees, or existing employees. In the event that the Company should hire a new employee

during the layoff or short-time period, laid-off employees who believe themselves capable of performing the work to be done by the new employee shall have the right to file a grievance in the third step of the grievance procedure.

58. Employees who have received special instructions on any order shall not be laid off until such order has been completed. It shall be understood that in no case, shall this provision be used to exclude from work an employee with previous experience who is capable of performing the work required on the job in question.

59. The Company shall provide the Union with a copy of a list listing the employees according to their hiring date. This list shall be revised from time to time but shall not exceed one revision every three months.

60. The Union agrees to provide the Company with a list showing the names of all stewards, grievance committeemen, and officers of the Union and their respective departments upon request. The Company shall provide the Union with a list of all foremen and their respective departments upon request.

61. During periods of reduced production, Union Officers,

Grievance Committeemen, and Shop Stewards will be retained in their department providing they can do the work, as long as any other employees in their departments are retained.

62. If the employee becomes an official of the Union, which necessitates his full time, he shall not lose seniority while serving in this capacity, providing his absence from the plan does not exceed one (1) year.

63. Any employee who is promoted from the bargaining unit to a supervisory position shall be permitted to return to his former position at the going rate of pay with accumulated seniority when his services as a supervisor are no longer required.

64. Whenever a general layoff or reduction in forces is about to take place, a notice shall be posted on the bulletin board outlining the approximate number of employees to be laid off. This notice shall be posted for forty-eight (48) hours before such layoffs begin. This paragraph shall not apply in layoffs of a temporary nature.

65. To protect his seniority, it is the employee's responsibility to keep the Personnel Office informed of his proper address.

66. The following rules shall govern the termination of seniority:

(a) Seniority shall accumulate during layoff if the layoff period is less than twenty-four (24) months. Employment shall terminate at the end of twenty-four (24) months. Employees who have been laid off for a period exceeding one year shall be required to take a physical examination. Such examination shall not be used as a condition of employment.

(b) Resignation of an employee.

(c) Discharge of an employee for good cause.

(d) Failure to report for work at conclusion of leave of absence.

(e) In recalling employees after a layoff, the Company shall notify each employee at his last known address by telephone, registered mail, or telegram if necessary when to report for work. Such employees who are unemployed on the date of receipt of the notice shall be given three (3) days in which to return to work.

Employees who are employed elsewhere shall be given one (1) week in which to return to work provided the employee notifies the Company of his intention within forty-eight (48) hours of receipt of his notice. Failure to abide to these provisions will result in the termination of the employee's seniority.

Job Bidding

67. When there are any jobs within the bargaining unit which can be filled from among the existing employees, the

following job bidding procedure shall apply: It is mutually understood, however, that this bidding procedure shall not preclude the right of the Company to hire new employees possessing the necessary skills for jobs which existing employees are incapable of performing:

(a) The job openings shall be posted on all bulletin boards for 48 hours.

(b) No bids shall be accepted after the 48-hour posting period has ended.

(c) Any person bidding for a job cannot thereafter with-

draw the bid.

(d) It is agreed that job bidding shall consist of signing an application therfor in the Personnel Office.

(e) The employer shall notify the successful bidder within 48 hours after the close of the posting period.

(f) Senior employees, possessing the necessary qualifications shall have the preference in job bidding; however, seniority alone shall not entitle any bidder to the job.

(g) It is recognized by both parties to this agreement that the job bidding program is intended to provide promotional opportunities for the employees and that employees shall not be permitted to bid from a higher paid job to a lower paid job except for the following reasons:

(1) If an employee is physically unable to continue in his regular occupation because of sickness or

injury, he shall be permitted to bid on a lower paid job which he is capable of performing.

(2) Employees who have been qualified in the same classification for a period of five (5) years or more may bid on other jobs having a lower day-rate if it appears that the job they are bidding on shall provide them with a greater amount of earnings per hour because of piecework earnings. It is further understood and agreed, however, that no more than two (2) qualified employees shall be permitted to leave at any one time so as not to interfer with the orderly operation of the department involved (refer to paragraph (j) of this section).

(h) After a bidder has been selected on the basis of his seniority and ability, he relinquishes all right to return to his former job. He shall have thirty (30) working days to determine whether he wishes to remain on the job upon which he bid. If he wishes not to remain on

the job, he will be transferred to the labor pool for a period of thirty working days before he is eligible to bid again. The Company shall give the successful bidder who has been selected on the basis for his seniority and ability thirty (30) working days to prove his worth on the new job. If he is removed from the job by the Company before his thirty (30) working days have expired, he shall have the right to return to his former job.

(i) A successful bidder shall remain on his job for a period of six (6) months after he has served the established apprenticeship time or becomes qualified, whichever is sooner.

(j) It is agreed that not more than two employees in one classification can be successful bidders at one time.

More than two will be permitted to bid out so long as these additional removals do not disrupt the operations of the department.

(k) Unless previously experienced, the successful bidder

shall receive the starting rate on the new job.

(l) If a successful bidder bids on a related job as outlined in Exhibit B, he will receive one half (½) the difference between the base rate and the top rate on the job. However, if the one half (½) difference exceeds his present rate, he shall maintain his current rate.

(m) Jobs such as Welders, Machinists, Mechanical Assemblers, Maintenance Men, Boiler House Men, and Winders shall be known as progression type jobs and shall not be posted for bid except when new employees are needed to fill positions open in the lowest classification. The employee to be upgraded in as progression job shall retain his current rate at the beginning of his apprenticeship. Employees shall progress on the basis of their seniority and ability.

(n) All piecework jobs excepting those in Job Class 1 shall be posted for bid. Daywork jobs in all classifications under Job Class 5 shall not be posted for

bid; however, appointment to these jobs shall be made in such a manner that preference shall be shown to senior men who possess the necessary ability to perform the work involved.

Section 9—Management Prerogatives

68. The management of the factory, the control of the method, process and means of production, the scheduling of

overtime, the direction of the working forces, the assigning of jobs, the right to hire, suspend, layoff, transfer or discharge for justifiable cause, and the right to exercise justifiable discipline to insure the efficient and economical operation of the plant are vested exclusively in the Company. The uniform application of penalties governing justifiable discipline shall be subject to review by both the Management and the Union.

69. It is understood and agreed that this clause shall not be used to discriminate against any employee covered by this agreement.

Section 10—Vacations

70. (a) All employees in the employ of the Company for one

years' service shall be granted one week (40 hours') vacation with pay.

(b) All employees in the employ of the Company for two years' service shall be granted one week's vacation with 48 hours' pay.

(c) All employees in the employ of the Company for three years' service shall be granted one week's vacation with 56 hours' pay.

(d) All employees in the employ of the Company for four years' service shall be granted one week's vaction with 64 hours' pay.

(e) All employees in the employ of the Company for five years' service but less than ten years shall be granted two weeks' vacation with 80 hours' pay.

(f) All employees in the employ of the Company for ten years but less than fifteen years shall receive two weeks' vacation with 96 hours' pay.

(g) All employees in the employ of the Company for fifteen years shall receive three weeks' vacation, two weeks of which is to be taken at the regular vacation period and the third week to be taken at the employee's option.

(h) Employees with twenty-five (25) years' service shall receive three weeks' vacation but shall receive one hundred forty (140) hours' pay. Two weeks of this vacation shall be taken in the regular vacation period and the third week may be taken at the employee's option.

71. Eligible employees, both pieceworkers and dayworkers, will be paid their vacation pay at the average rate of earnings per hour paid during the first quarter of the year exclusive of overtime. Vacations for those employees who have no earnings in this first quarter shall be calculated on the last quarter worked.

72. Employees who resign or are discharged for good cause prior to their vacation will not be entitled to vacation or vacation pay.

73. Eligible employees who are laid off and recalled will receive their vacation pay provided they have worked at least

forty (40) weeks since July 1, 1956, July 1, 1957 or July 1, 1958.

74. New employees shall not be entitled to vacation or vacation pay unless they shall have completed one year's service. It is understood that the vacation season shall run from May 15th to December 31st of each calendar year covered by this agreement.

75. (a) Discharged servicemen who have returned will receive their vacation pay provided they have worked at least sixty (60) days prior to the vacation period.

(b) Any employee who has completed one year's service with the Company and who is drafted or enlists into the armed forces of our nation while our nation is at war or in a state of national emergency, shall receive one hundred dollars ($100) military bonus from the Company upon leaving to enter such armed forces.

(c) Employees with seniority entering the armed services of the United States shall, upon their return, be restored to their former jobs according to their seniority

and at their former rate of pay plus any increases incurred since their absence, provided they are mentally and physically capable of doing the work; provided that any such employee reports to the Company within ninety (90) days of the date of his honorable discharge and, provided the Company's situation has not changed so as to make it unreasonable or impossible to do so.

Section 11—Termination of Employment

76. Discharge may be made subject to cause only, and all discharges are subject to review by the Union and the Management under the grievance procedure outlined herein.

77. Any employee who is found to have been discharged without just cause shall be reinstated with full rights and reimbursed for all time lost at double his or her regular rate of pay, provided he or she has filed a grievance within three (3) working days of the time of the discharge. It will be possible, however, for both parties, namely the Union and the Management, to agree to

reinstate any discharged employee without payment of back wages. The Company, whenever possible, shall give to the employee and the Union, written advance notice of any com-

plaint concerning any employee whose work or conduct is unsatisfactory.

78. By mutual agreement of the parties, an employee shall, on his written request, be granted a leave of absence for legitimate personal reasons without pay for a period not to exceed thirty (30) days. An additional period of thirty (30) days shall be extended where necessary on approval of the Company and the Union.

79. An employee, who, while on leave of absence, engages in other employment without consent or fails to report for work on or before the expiration of his leave shall be considered to have quit without notice. If and when such employee is rehired by the Company, he shall have lost his seniority rights acquired by previous employment.

Section 12—No Strikes, No Lockouts

80. The Union agrees that there shall be no strikes, work stoppages, interruptions to or impeding of work for the duration

of this agreement. No officer of Local 3968 or representative of the Union shall authorize, instigate, aid or condone any such activities, nor shall any employee participate in or instigate such activities.

81. The applicable procedures of this contract shall be followed for the settlement of all grievances.

82. There shall be no lockouts during the life of this agreement.

Section 13—General Clauses

83. The Union agrees to adhere to the principle of a fair day's work for a fair day's pay and that it will use its best efforts in behalf of the Company to insure efficient and continuous production.

84. The Company and the Union will cooperate to eliminate accidents and health hazards. The Company shall continue to make reasonable provisions for the safety and health of its employees at the plant during the hours of their employment.

85. With the exception of safety toe shoes, protective devices, wearing apparel and other equipment necessary to properly protect employees from injury shall be provided by the Company; such as goggles, gas masks, face shields, respirators, and special

purpose gloves. Fire-proof, water-proof, or acid-proof protective clothing, when necessary and when required, shall be provided by the Company without cost, except that the Company may assess a fair charge to cover loss or wilful destruction thereof by the employee. Proper heating and ventilating systems shall be installed where needed.

86. Any employee who believes that his or her health is being impaired due to the nature of his or her employment in the plant may report to the First Aid Department and request a physical examination; and he or she shall promptly be referred to the plant physician, or a physician of his or her choice; and, in the event any illness or disability is found to be due to the nature of the work performed by the employee, the Company shall assume the expense of such examination and treatments.

87. If an employee is assigned to perform work which he sincerely believes to be unsafe or unhealthy to a degree above and beyond the normal hazards inherent in the operation in question, he may request his foreman to call an immediate meeting of the Union's Safety Committee and the Company's Safety Committee to investigate and review the condition in question.

The Committees shall then render a decision as to whether or not the employee was justified in refusing the assignment. If the

condition is declared unsafe, the employee shall be compensated in full for any time lost. If it is declared to be safe, he shall not be compensated for any time lost.

88. Should the Safety Committees be unable to agree on a disposition within twenty-four hours, they shall place the names of six impartial umpires in a hat and draw one name. This one umpire will then be immediately contacted to investigate the condition and render a decision which shall be immediately final and binding on all parties to the agreement.

89. A Safety Committee consisting of not more than three employees designated by the Union and not more than three Company members designated by the Company shall be established in the plant. The Safety Committee shall hold monthly meetings at times determined by the Committee. Time consumed on Committee work by Committee members designated by the Union shall be considered hours worked to be compensated by the Company. The function of the Safety Committee shall be to advise with plant management concerning safety and health but not to handle grievances. In the discharge of its functions, the

Safety Committee shall formulate suggested changes in existing practices and rules; and recommend adoption of new practices and rules. Advices of the Safety Committee, together with supporting suggestions, recommendations and reasons, shall be submitted to the Company representative for his consideration and for such action as he may consider consistent with the Company's responsibility to provide for the safety and health of its employees during the hours of their employment.

90. Any employee classified as a foreman shall not do any production or maintenance work of any kind.

91. The Union agrees that it will not restrict production and the Company agrees that it will not restrict earnings.

92. The Company will permit the Union to use the Company's bulletin boards for posting of union notices of a non-

controversial nature. Such posting will be made by Union Representatives and notices will be submitted to the Company Representative for review before such posting is effected.

93. If an employee is taken from a higher paid job and assigned to a lower paid job for the Company's convenience, the

higher rate piecework or dayrate shall apply so long as work remains to be completed on his particular operation on that order.

94. The Company will pay up to two days wages for time lost due to deaths in the immediate family. This benefit will be paid to those employees who have been with the Company one year or more and would be payable in the case of the death of a mother, father, sister, brother, husband, wife, or children.

95. All hourly piecework and incentive rates now in effect shall remain in effect for the duration of this agreement except for technological changes in the equipment; changes in method of process; and changes in design; however, it is agreed that a system of standard hours shall replace the former "money" incentive system throughout the factory.

96. It is further agreed that this is merely a change of system; and it is intended that the changeover shall not result in any decrease or increase in earnings where the amount of production remains unchanged, and where no change of design or method is involved.

97. The Company shall adjust any standards which prove to

be inequitable after an experimental period, not to exceed six (6) pay periods, has demonstrated the time allowed to be inadequate and the adjustment shall be retroactive to the date on which the changeover was made and/or the time standard was installed.

98. Whenever changes occur in jobs which are substantial and definite enough to warrant reclassification or when a new job is introduced into the factory which needs to be classified and have a rate established therefor, the following procedures shall be followed:

(a) The Company shall determine to the best of its ability a description and the new dayrate which shall apply; and shall place such rate of pay in effect.

(b) If the rate is satisfactory and if no grievance is filed within two weeks thereafter, then such classification and rate shall remain in effect for the duration of the Labor Agreement.

(c) If the description and rate placed upon the job by the Company is unsatisfactory in the opinion of the Classification Committee Chairman, he shall submit a griev-

ance within two weeks and the matter will be referred to the job classification committee of the union and the company.

(d) These classification committees shall review the job description and rate of pay and shall endeavor to reach an agreement on the new or changed job using the same methods and means as were used to describe all the other jobs and rates therefor. If the committees are unable to agree on the proper classification and dayrate, the question shall then be referred to a meeting of the International Staff representative, the Company representative, and the Local Union Grievance Committee for disposition.

(e) If, as a result of the meeting described in paragraph (d), the question still remains unsettled, then the matter shall be referred to an impartial arbitrator so that the various elements and arguments may be presented to him for an impartial opinion.

(f) It is agreed by the Company and the Union that the

impartial arbitrator shall not have the right to establish a job description nor shall he have the right to establish a rate of pay in such matters. He shall, however, be empowered by the parties to render an opinion as to whether the rate and description established by the company is truly consistent in its relationship to the other classifications and rates; and whether such rates established by the company is practical and fair; and shall be empowered to render an opinion which will indicate to the Union and the Company whether the established rate is fair and in keeping with other previously established rates.

(g) If, in the impartial arbitrator's opinion, the rate is fair, the rate shall remain in effect and no further argument nor processing of the grievance shall take place. If the opinion of the impartial arbitrator indicates that the rate is not fair, not in keeping with previous standards and not practical in its application, then

another meeting of the job classification committees of the Company and the local Union shall be held, and a further effort shall be made to establish a rate which is equitable, fair, and practical.

(h) If, after this meeting described in paragraph (g) has taken place; and an agreement is still not forthcoming, then the matter shall be referred again to the same impartial arbitrator and he shall be given full power to describe the job and to establish a rate of pay therefor. The question of retroactivity shall be left to the arbitrator's discretion.

99. The Union and the Company agree that when a job which was formerly on incentive is changed or when a new piecework rate is established, the following procedures shall be followed:

(a) The Company shall determine the piecework price for such work and shall place this piecework price in effect.

(b) If no grievance is filed within two weeks, the price shall be considered final and shall remain in effect.

(c) If the employee or employees involved sincerely believe that the price is unfair, a grievance shall be submitted within two weeks and the Chairman of the Grievance Committee shall request a meeting with the Company to discuss the new price.

(d) If no settlement is reached at the meeting, the matter shall be referred to the Director of Industrial Relations of the Company, and the Local President, and the Local Chairman of the Grievance Committee for further study.

(e) After the job has been investigated and studied by both persons referred to in paragraph (d), such persons shall make a sincere and honest effort to reach a decision as to whether the price is fair or unfair. If it is agreed that the price is fair, then the price shall remain in effect and there shall be no further processing of the grievance nor further discussion of the price.

(f) If the parties referred to in paragraph (e) are unable

to reach an agreement, the matter shall be referred to an impartial arbitrator.

(b) It is agreed by the parties to the Labor Agreement that the impartial arbitrator shall not have the power

to establish incentive prices, but he shall be empowered to hand down a decision explaining his opinion as to whether or not the price is fair and practical in its application and in keeping with other incentive programs within this factory.

(h) If his opinion is such that he feels the price is not fair nor practical, he shall so advise the parties to this agreement and they shall again review the price by having a meeting of the International Staff representative, the Local Grievance Committeemen, and the necessary Company representatives; and all parties shall endeavor to arrive at a price which is fair and equitable in its application.

(i) If the arbitrator's opinion is such that the price is fair, then the price shall remain in effect and no further

discussions nor grievances shall be considered.

(j) If the arbitrator's decision is such that the price is unfair and the matter still remains unsettled after the meeting described in paragraph (h), then the question shall be referred once again to the same impartial arbitrator and he shall be empowered to establish an incentive price. His decision shall be final and binding upon both parties to this agreement. The question of retroactivity shall be left to the arbitrator's discretion.

100. The Union and the Company agree that new incentive rates or revised incentive rates on previously established incentive jobs, should be arrived at in such a manner that the workmen should be able to earn a comparable amount of earnings so long as they apply themselves in a conscientious manner; and expend the same effort, initiative, skill, and other elements which were practiced by them in earning their former piecework averages.

101. Trainees for management positions with the Company shall receive training in various production departments of the

factory. Both parties to this agreement recognize the desirability of such training and encourage the highest possible degree of cooperation between their respective representatives in carrying out the program to a successful conclusion.

The conditions governing this program shall be as follows:

(a) Trainees shall be limited in number. The number of trainees in training at any one time shall not exceed one trainee for each hundred (100) production workers.

(b) After trainees are selected by the Company, they shall be placed on the salaried payroll and shall not become members of the Union during such training period. They shall have no seniority and their retention or rejection as trainees shall be at the discretion of the Company.

(c) It is agreed that no union member on production work shall be deprived of his classified job by any trainee.

(d) Trainees shall be permitted to do production work and

act as observers in such departments of the factory as the Company considers to be necessary to their training program.

(e) Pieceworkers, working with trainees, shall suffer no reduction in piecework earnings as a result of any handicap imposed upon them by the trainee's presence.

(f) The training time for each trainee shall consist of a total of fifty-two (52) weeks and the time spent in each department shall conform as closely as possible to the attached schedule. It is recognized, however,

that various trainees may require different types of training and the attached schedule shall be considered primarily as a guide rather than an inflexible policy.

102. Approximate training time for trainees in various departments of the factory:

Department	Weeks
Insulation	2
Winding	4
Coil Treating	2
Distribution Building, Assembly and Finishing	5

Large Building	1
Large Assembly	8
Large Finishing	8
Test	9
Steel Cutting	1
Distribution Core Department—	
Annealing	1
Radiator Department	1
Tank Fabrication and Testing	3
Car Loading	2
Shot Blast and Paint	1
Tap Changer	2
Electrical Finishing	2

103. The employer agrees to pay to the employee whose attendance is required as Jurors before the Courts of the Nation, State or County, the difference between their average earnings and the regular fee allowed for such attendance. The average hourly earnings shall be computed in the same manner as holiday pay.

Section 14—Profit Sharing

104. Employees of this unit with three (3) or more years seniority on or before January 1, 1957, will be covered under

the non-contributory phase of the McGraw Electric Company Profit Sharing as of that date. All other employees in this unit will be covered on the June 30th or December 31st, following

their third anniversary of continuous employment as required by the Plan. Employees with three (3) or more years seniority accrued on or before January 1, 1957 may, effective January 1, 1975, elect to join the contributory phase of the McGraw Electric Profit Sharing Plan. All other employees of the unit following their third anniversary of continuous employment as required by the Plan may elect to join the contributory phase of the Plan on the June 30th or December 31st following their third anniversary of continuous employment. This involves the three percent (3%) contribution from the employee, matched by one and one-half percent (1½%) from the Company as provided in the Plan.

105. Profit Sharing from the Company will involve the non-contributory Profit Sharing payment by the Company in amounts up to fifteen percent (15%) of the employee's yearly earnings, according to the Plan formula, with full withdrawal rights in the case of death, permanent and total disability or old age retirement. Vesting for service up to fifteen (15) years will be as shown in the Plan. Dividends and accruals from employee early terminations will provide future additions to the individual funds.

106. Copies of the Plan and material described in the Plan

will be distributed to all employees in the Unit. All participating employees will receive periodic financial information and will annually receive statements showing their participation.

Section 15—Termination of Contract

107. This agreement shall remain in full force and effect from December 5, 1956, until midnight December 6, 1959; and

thereafter it will be automatically renewed unless either party gives the other written notice by registered mail thirty (30) days prior to the expiration of the agreement that it proposes certain changes therein.

108. Any notice to be given under this agreement shall be given by registered mail, be completed by and at the time of mailing, and if by the Company, be addressed to:

The United Steelworkers of America
Commonwealth Building
Pittsburgh, Pennsylvania

and, if by the Union, to:

Pennsylvania Transformer Company
A. McGraw Electric Co. Division
Canonsburg, Pennsylvania

109. Either party may, by like written notice, change the address to which registered mail notice to it shall be given.

110. In witness whereof, the authorized representatives of both parties have placed their signatures this 4th day of December, 1956.

For the Company:

Fred L. Huber
Earl H. Rodgers
G. Linn Culp

For the International:

David J. McDonald
I. W. Abel
Eugene Maurice
Howard R. Hague
Guy S. Miller

For Local 3968:

Emil Dorchak
Anthony M. Bastio

William H. Miller
Samuel J. Amorose
Charles J. Rubis
Roy T. Skiles
Andrew A. Dichak
John S. Kottner
Jno. M. Polly
John P. Katocs

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EXHIBIT "A"

It is agreed that the respective job classes and titles as set forth herein shall become effective December 5th and shall remain in effect for the duration of the agreement unless changed by mutual agreement of the parties hereto.

Job Class 1—
Janitor & Sweeper
Laborer
Stick Sander
Spacer Gluer
Storeroom Clerk
Tank Cleaner, Large Tank Shop

Job Class 2—
Assembler, Bushing, Small
Roller Helper, Large Tanks
Shear Plate Helper
Sorter, Wound Core Department
Sweeper, Automatic

Job Class 3—
Grinder, Tank Test
Painter's Helper
Spacer Puncher
Storeroom Helper
Machine Operator, Deblocker & Decaser

Job Class 4—
Gasket Maker
Carpenter's Helper

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Core Winder
Framer
Insulation Cutter-Winding
Material Checker & Shipper
Series Connector
Shotblast Helper, Int. & Large
Tester, Small Tank Shop
Welder, Acetylene
Reamer and Expander
Radiator Flusher
Machine Operator No. 2, Insulation Department
Winders Helper
Crane Runner
Welder's Helper—Intermediate Tank Shop
Tube Mill Helper

Job Class 5—
Basket Loader
Crimping Machine Operator
Cutalator Operator
Machine Operator, Tank Shop
Radiator Tester
Ring Former—Intermediate
Stacker, Core
Automatic Truck Operator
Machine Operator, Cable Preparation
Machine Operator, Blocker & Caser
Machine Operator, Frame Spot Welder
Wire Wrapper

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Wireman
Punch Press Operator

Shotblast, Distribution
Slotting Machine Operator, Cores
Current Transformer Winder
Spacer Brazer

Job Class 6—
Builder (Distribution)
Top End Picker
Electrician's Helper
Tank Tester
Greaser & Oiler
Machine, Beading Operator, Small
Receiver
Core Winder, Insert Type
Alfa Shearman
Slitting Machine Operator, Paper
Welder, Tack, Class C
Welder, Seam Resistance
Finisher, Distribution
Machine Operator, Wound Core Department
Shearman (Automatic Shear)
Truck Driver, Automatic Fork (Baker)

Job Class 7—
Builder, Large
Burner, Hand
Layout, Insulation
Painter No. 2
Roller, Intermediate Tank Shop
Shearman, Core Steel

Shotblaster, Large & Intermediate Tank
Shearman, Plate Shear
Winder, Class 5
Punch & Shear Press Operator
Shearman, Oscillating

Machine Operator No. 1, Insulation Department
Toolroom Attendant

Job Class 8—
Assembler (Distribution)
Carpenter, Winding Department
Coil Stacker
Punch Operator. (Large Tank including Layout)
Shipper
Truck Driver, Mobile
Mechanical Assembler "B"
Bar Roller

Job Class 9—
Carpenter, Assembly Department
Roller, Large Tank Shop
Welder, Class B, Arc
Burner, Hand, Stainless Steel
Slitting Machine Operator, Steel

Job Class 10—
Burner, Machine
Fitter Layout
Hook-on Man
Machinist, Class 4
Repairman "B", Distribution

Job Class 11—
Tap Changer Assembler
Maintenance "B"
Welder, Class A
Machine Operator, Power Friction Saw, Steel
Machine Operator, Head
Craneman
Mechanical Assembler "A"
Winder, Class 4

Job Class 12—
Winder, Class 3

Burner, Machine, Stainless Steel
Finisher, Large
Control Apparatus Assembler
Machine Operator, Tube Mill

Job Class 13—
Boiler House Operator (Second Class)
Assembler, Large
Maintenance, Automotive
Brake Press, Layout
Winder, Class 2
Machinist, Class 3

Job Class 14—
Maintenance "A"
Maintenance Mechanic, Diesel
Bricklayer, Concrete Finisher
Winder, Class 1

Job Class 15—

Job Class 16—
Electrician, Maintenance
Maintenance, Construction
Annealing Furnace Attendant

Job Class 17—
Boiler House Operator (First Class)
Machinist, Class 2

Job Class 18—
Electrician, Construction
Electrical Finisher

Job Class 19—

Job Class 20—

Job Class 21—
Machinist, Class 1

Exhibit "B"

This exhibit outlines jobs which have a relationship with one another. For example, Bid Job No. 2 (Assembler, Distribution), has a relationship with Bid Jobs 3 and 34; and a qualified Distribution Assembler may bid on Bid Jobs 3 and 34 without going down to the labor rate to begin his apprenticeship. If he bids on a related job, he shall be paid in accordance with Paragraph 67L.

1. Annealing Furnace Attendant .....
2. Assembler (Distribution) 3– 34
3. Assembler (Large) .....
4. Builder (Distribution) 2– 5–104
5. Builder (Large) 34
6. Burner (Hand) 7– 8– 9– 35
7. Burner (Hand—Stainless Steel 8– 9– 35
8. Burner (Machine) 9
9. Burner (Machine Stainless Steel) ....
10. Boiler House Opr., First Class .....
11. Boiler House Opr., Second Class 10

12. Bricklayer, Concrete Finisher .....
13. Basket Loader 116
14. Bar Roller 15– 35– 46– 77
15. Brake Press—Layout .....
16. Crane Runner 66– 89
17. Control Apparatus Assembler .....
18. Carloader (Class A) .....
19. Carpenter (Assembly Dept.) .....
20. Carpenter (Winding Molds) 115
21. Carpenter's Helper 19– 20
22. Coil Stacker 116
23. Core Stacker 25
24. Core Winder 23– 25– 28– 93

25. Core Winder, Insert Type 70– 82– 83
26. Craneman .....
27. Crimping Machine Opr. .....
28. Cutalator Operator 25– 70– 81– 82
29. Electrical Finisher .....
30. Electrician (Maintenance) 32

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31. Electrician's Helper 30
32. Electrician Construction .....
33. Finisher (Distribution) 2– 4– 34– 36
34. Finisher (Large) 3
35. Fitter Layout (Large Tank) 15
36. Framer 2– 4– 5
37. Greaser & Oiler 57
38. Grinder (Tank Test) .....
39. Hook On Man .....
40. Insulation Layout 116
41. Janitor & Sweeper .....
42. Laborer .....
43. Machine Operator (Cable Preparation) .....
44. Machine Operator Insulation No. 1 .. 22
45. Machine Operator Insulation No. 2 .. 44
46. Machine Operator Power Friction Saw —Steel 15
47. Machine Operator (Tank Shop) 14– 49– 68– 76– 84

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48. Machine Operator (Head) 15
49. Machine Operator (Beading Machine —Small) 14– 68– 76– 77– 84
50. Machine Operator (Beading Machine —Inter.) .....

51. Machine Operator Tube Mill .....
52. Machine Operator Deblocker & Decaser 23
53. Machine Operator Blocker & Caser .. 23
54. Machine Operator Frame Spot Welder
55. Machine Operator Wound Core Dept. . 23
56. Maintenance Man (Class A) 61
57. Maintenance Man (Class B) 56
58. Maintenance, Automotive .....
59. Material Checker & Shipper 74
60. Maintenance, Automotive & Diesel ...
61. Maintenance, Construction .....

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62. Maintenance, Service Department ....
63. Mechanical Assembler "A" 17
64. Mechanical Assembler "B" 17– 63
65. Painter No. 2 .....
66. Painter No. 1 .....
67. Painter's Helper 66
68. Punch Opr. (Lg. Tank inc. Layout) .. 15– 35– 46– 77
69. Punch Press Opr. 25– 70– 81– 82– 83
70. Punch & Shear Press Opr. 92
71. Radiator Flusher 73
72. Reamer & Expander 6– 35–114
73. Radiator Tester .....
74. Receiver .....
75. Ring Former (Intermediate Tanks) ..
76. Roller (Intermediate Tanks) .14– 15– 35– 46– 68– 77
77. Roller (Large Tanks) 15– 35– 46
78. Roller's Helper (Large Tanks) 77
79. Repairman "B", Distribution .....
80. Series Connector .....

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81. Shearman (Alfa Shear) 83
82. Shearman (Core Steel) 92
83. Shearman (Oscillating) 92
84. Shearman (Plate Shear) ... 14– 15– 35– 46– 68– 77
85. Shearman (Automatic Shear—Winding) .....
86. Shearman's Helper (Plate Shear) 84
87. Shipper 18
88. Shotblaster (Distribution) 66– 89
89. Shotblaster (Inter. & Large) .....
90. Slitting Machine Opr. (Paper) .....
91. Shotblaster's Helper (Inter. & Large) . 66– 88– 89
92. Slitting Machine Opr. (Steel) .....
93. Slotting Machine Opr. (Cores) .. 25– 70– 81– 82– 83
94. Spacer Brazer .....
95. Sorter (Core Steel) 23– 24– 25– 28– 93
96. Spacer Puncher 44– 45
97. Storeroom Clerk 59– 74

98. Storeroom Helper 59– 74
99. Sweeper, Automatic .....
100. Tap Changer Assembler 17– 64
101. Tank Tester (Small) 103
102. Tank Tester (Intermediate) 103
103. Tank Tester (Large) .....
104. Top End Pickers 5
105. Truck Drivers, Automatic .....
106. Truck Driver, Automatic Fork Truck (Baker) .....
107. Truck Drivers, (2½ ton-mobile) ...
108. Toolroom Attendant (Machine Shop)
109. Tube Mill Helper 51
110. Welder's Helper 6–114
111. Welder, Acetylene 6–114

112. Welder, Arc Class A .....
113. Welder, Arc, Class B 112

114. Welder, Arc. Class C 6– 8– 9–113
115. Welder, Resistance Machines .....
116. Winder, Class 5 22–117
117. Winder, Class 4 118
118. Winder, Class 3 119
119. Winder, Class 2 120
120. Winder, Class 1 .....
121. Winder's Helper 13– 44–116
122. Wireman .....
123. Wire Wrapper .....
124. Machinist. 1st Class .....
125. Machinist, 2nd Class 124
125. Machinist, 2nd Class 124
127. Machinist, 4th Class 126

Wage Schedule—Exhibit "C"

JOB CLASS	Effective 12-5-56 Incentive Base	Effective 12-5-56 Day Rate	Effective 12-5-57 Incentive Base	Effective 12-5-57 Day Rate	Effective 1-1-59 Incentive Base	Effective 1-1-59 Day Rate
1	$1.73	$1.75	$1 79	$1.83	$1.85	$1.91
2	1.77	1.79	1.835	1.875	1.90	1.96
3	1.81	1.83	1.88	1.92	1.95	2.01
4	1.85	1.87	1.925	1.965	2.00	2.06
5	1.89	1.91	1.97	2.01	2.05	2.11
6	1.93	1.95	2.015	2.055	2.10	2.16
7	1.97	1.99	2.06	2.10	2.15	2.21
8	2.01	2.03	2.105	2.145	2.20	2.26
9	2.05	2.07	2.15	2.19	2.25	2.31
10	2.09	2.11	2.195	2.235	2.30	2.36
11	2.13	2.15	2.24	2.28	2.35	2.41
12	2.17	2.19	2.285	2.325	2.40	2.46

13	2.21	2.23	2.33	2.37	2.45	2.51
14	2.25	2.27	2.375	2.415	2.50	2.56
15	2.29	2.31	2.42	2.46	2.55	2.61
16	2.33	2.35	2.465	2.505	2.60	2.66
17	2.37	2.39	2.51	2.55	2.65	2.71
18	2.41	2.43	2.555	2.595	2.70	2.76
19	2.45	2.47	2.60	2.64	2.75	2.81
20	2.49	2.51	2.645	2.685	2.80	2.86
21	2.53	2.55	2.69	2.73	2.85	2.91

BENEFIT ILLUSTRATIONS FOR CIVIL ACTION NO. 75-81

EXPLANATION OF COLUMN DESIGNATIONS

1. Name
2. Social Security number
3. Date of birth
4. Date of hire
5. Market value of profit sharing account as of the Effective Date of the Pension Agreement. This value is the portion of the account representing only company contributions and earnings. Company stock is to be valued at $20⅜ per share—the value on the Effective Date of the Pension Agreement.
6. Value of minimum guaranteed pension as of the Effective Date of the Pension Agreement. This is to be calculated by adjusting the market value of the preceding column by a stock adjustment factor in which each share of stock is valued at $30 per share.
7. Value of accrued pension equal to $8 per month per year of service for service prior to the Effective Date of the Pension Agreement. This $8 pension is based on a full cash refund feature with respect to the amount in the preceding column plus future interest. It is worth more than a deferred life annuity, although the precise actuarial value is approximated.
8. Value of Pension payable determined as of the Effective Date of the Pension Agreement. This is the greater of the preceding two columns.
9. Excess of value of Pension payable over market value of profit-sharing account.

MCGRAW EDISON - CANONSBURG BENEFIT ILLUSTRATIONS FOR CIVIL ACTION FILE NO. 75-81

NAME	SOC-SEC-NO	DATE OF BIRTH	DATE OF HIRE	COMPANY PORTION AT $ 20 3/8	COMPANY PORTION AT $ 30	PRESENT VALUE PENSION BENEFIT	GREATER CO. AT $30 & PENSION	EXCESS PLAN BENEFIT OVER CO.$20 3/8
SVITEK	041-36-1852	06/11/44	01/12/70	586.67	779.17	819.00	819.00	232.33
NORVELL	056-20-1038	12/25/27	09/15/52	4639.48	9326.85	9326.00	9326.85	4687.37
BREWER	159-28-2931	06/17/34	10/10/66	1270.64	1867.39	2144.00	2144.00	873.36
COATES	160-12-4344	06/09/18	08/23/50	5751.10	10034.22	15917.00	15917.00	10165.90
MORRIS JOHN W	160-22-1046	08/13/27	12/11/50	7174.62	13113.24	10687.00	13113.24	5938.62
YESENOSKY GEORGE	160-22-5650	01/22/27	02/09/53	6505.08	10557.20	9931.00	10557.20	4052.12
WILLIAMS ALLEN	160-22-6767	04/04/29	04/05/67	1021.03	1492.65	2529.00	2529.00	1507.97
PIASENTE	160-30-6610	08/14/37	02/18/63	2352.33	3719.08	2749.00	3719.08	1366.75
SAUT ROBERT	160-30-6733	08/06/35	09/12/66	1360.24	2005.11	1975.00	2005.11	644.87
PAUL ROBERT	160-36-0253	03/05/43	10/06/64	1744.23	2716.35	2226.00	2716.35	972.12
GARNER EDGAR	160-36-2187	06/19/47	06/30/66	1185.00	2070.50	1463.00	2070.50	885.50
BALOG JR STEVE W	161-18-9220	03/06/18	10/02/47	8595.49	13966.24	18299.00	18299.00	9703.51
UNIEJEWSKI EDWARD J	161-32-0654	04/30/42	06/13/67	1286.58	1844.83	1640.00	1844.83	558.25
LOUIS	161-32-1288	10/25/39	01/23/64	1833.11	3382.73	2276.00	3382.73	1549.62
STALEY	161-32-2000	03/02/40	10/03/66	1306.35	1941.60	1595.00	1941.60	635.25
PALLASIA	161-32-2397	03/25/39	10/28/63	2271.39	3253.14	2426.00	3253.14	981.75
ROTHKA	161-34-6308	08/11/44	11/29/65	1538.51	2327.76	1764.00	2327.76	789.25
BUSH	161-34-8293	08/12/43	07/25/66	649.38	1554.13	1558.00	1558.00	908.62
LAJEVIC JOHN A	161-34-9143	05/12/41	11/21/66	1052.29	1533.54	1461.00	1533.54	481.25
FRAIETTA	162-16-1200	09/29/17	07/12/63	1577.62	2982.87	6880.00	6880.00	5302.38
MOTTO FREDERICK E	162-18-2602	09/14/20	09/02/52	7560.98	13547.73	12842.00	13547.73	5986.75
RUBIS CHARLES J	162-18-5960	02/04/18	09/15/53	8804.02	14309.52	14761.00	14761.00	5956.98
BERNARD ALFRED	163-12-8657	10/18/18	01/15/47	15838.14	25395.76	19520.00	25395.76	9557.62
GAZVADA	163-26-3038	07/09/30	11/06/63	2549.57	4031.82	3936.00	4031.82	1482.25
MILLER	163-26-8295	01/05/32	03/30/64	2379.90	3737.02	3410.00	3737.02	1357.12
CLARK ARTHUR W	163-26-8395	05/03/34	03/24/53	8038.74	13736.74	7374.00	13736.74	5698.00
GLADISH	163-26-8439	12/01/32	06/23/66	1128.68	1040.93	2340.00	2340.00	1211.32
HILDEBRAND WILLIAM E	163-26-8580	05/18/30	05/22/67	599.18	1330.68	2348.00	2348.00	1748.82
CALVERT	163-26-9163	10/20/30	07/14/66	1105.88	1625.63	2530.00	2530.00	1424.12
KNODLE	164-28-1920	09/07/37	11/06/56	2202.66	4021.78	4947.00	4947.00	2744.34
CRAILETTA JOSEPH	165-26-0103	11/28/33	12/11/63	2922.21	4606.58	3272.00	4606.58	1684.37
BENNETT GERALD	165-26-2558	12/12/33	03/25/63	3100.52	4919.64	3511.00	4919.64	1819.12
SCHMIDT	165-28-5074	06/05/35	07/22/63	2817.04	4462.91	3195.00	4462.91	1645.87
JONES	165-28-5382	06/21/33	05/25/59	3840.34	6217.71	4935.00	6217.71	2377.37
BACKNER S J	165-28-5538	05/12/34	02/22/60	3290.81	5571.93	4404.00	5571.93	2281.12
GREELY LEWIS	165-28-6438	10/20/35	10/16/63	2028.78	3154.90	2808.00	3154.90	1126.12
ROMAN	166-24-0281	12/25/24	02/25/53	6587.48	10458.85	11065.00	11065.00	4477.52
KIFER	166-24-0781	09/23/24	01/20/47	6710.97	10459.34	13611.00	13611.00	6900.03
POPIOLKOWSKI EDWARD	166-24-3548	02/26/21	09/19/46	8456.79	13644.66	15927.00	15927.00	7470.21
MCCOY JAMES R	166-24-3954	08/04/30	10/20/52	6091.40	9864.40	8057.00	9864.40	3773.00
ZOVACK FRANK	167-03-2451	10/27/18	09/03/46	9015.98	15917.10	18201.00	18201.00	9185.02
KATOCS	167-03-2453	11/24/16	03/05/47	6982.21	11142.33	18365.00	18365.00	11382.79
DEWALT	167-10-6086	07/30/17	07/31/47	9868.43	16297.93	19981.00	19981.00	10112.57
WAINER	167-26-0706	07/31/33	07/16/51	8461.76	13370.51	9855.00	13370.51	4908.75
RINGHEISER ROBERT	167-26-5407	07/03/35	05/15/67	1269.90	1847.40	1893.00	1893.00	623.10
LUTTY DAVID C	168-05-0873	08/06/14	05/15/45	7541.76	12248.38	22134.00	22134.00	14592.24
CHOPP JOHN E	168-28-9098	01/24/35	03/22/56	5233.34	8505.84	5553.00	8505.84	3272.50
LESEN MIKE	169-03-4377	08/30/14	09/19/46	7744.51	12614.76	21201.00	21201.00	13456.49
CHICO JOHN	169-05-4063	06/06/14	09/24/47	8055.44	13416.56	21860.00	21860.00	13804.56
CAIKLINSKI	169-05-4935	09/14/15	08/29/46	7813.36	17284.36	20496.00	20496.00	12682.64

MCGRAW EDISON - CANONSBURG BENEFIT ILLUSTRATIONS FOR CIVIL ACTION FILE NO. 75-81

NAME	SOC-SEC-NO	DATE OF BIRTH	DATE OF HIRE	COMPANY PORTION AT $ 20 3/8	COMPANY PORTION AT $ 30	PRESENT VALUE PENSION BENEFIT	GREATER CO. AT $30 & PENSION	EXCESS PLAN BENEFIT OVER CO.$20 3/8
ZOVACK S R	169-05-5421	10/11/12	09/03/46	8500.82	13659.82	24115.00	24115.00	15614.18
KOBERT	169-05-5615	08/14/18	10/22/46	5004.99	7411.24	16801.00	16801.00	11796.01
RYBACKI WALTER	169-05-5699	11/15/15	09/18/46	8697.83	14039.70	20105.00	20105.00	11407.17
ESSICK	169-05-5715	03/22/13	01/15/47	8534.37	13856.99	23868.00	23868.00	15333.63
PATRENE	169-07-4750	08/20/20	04/14/52	4620.40	7248.02	12162.00	12162.00	7541.60
CESSAR	169-10-8554	07/20/16	04/15/42	7423.81	11995.68	22918.00	22918.00	15494.19
JEFFERS JOHN G	169-26-6109	05/09/33	06/04/53	7444.32	12150.94	7446.00	12150.94	4706.62
DEEMS	169-26-6326	04/07/34	08/30/67	909.64	1275.39	1843.00	1843.00	933.36
SAIEVA JAMES	169-26-6513	12/19/31	11/09/59	4072.23	6305.23	5062.00	6305.23	2233.00
DANIELS	169-26-6856	06/16/32	02/10/60	4031.96	6505.58	5023.00	6505.58	2473.62
HOLIK	169-26-6969	04/16/35	07/22/63	2398.53	3774.90	3100.00	3774.90	1376.37
ANGOTT	169-26-7008	09/05/36	07/15/63	2257.58	3585.83	2780.00	3585.83	1328.25
HARTMAN	170-03-2135	12/11/16	04/28/41	9902.86	16005.11	22624.00	22624.00	12721.14
KITCH JOHN J	170-03-6962	07/06/08	04/29/42	7995.75	12981.50	34804.00	34804.00	26809.25
HARRIS JOHN H	170-14-8569	07/19/20	12/07/65	1212.40	1520.40	4604.00	4604.00	3391.60
CYPHER HOWARD J	170-32-1631	10/31/40	09/16/63	2579.14	4061.39	2294.00	4061.39	1482.25
CASPER	170-32-1635	09/19/43	10/26/64	1866.58	2906.08	2165.00	2906.08	1039.50
RAMEY	170-32-1779	06/03/43	06/26/67	1523.25	2197.00	1652.00	2197.00	673.75
CONONGE ED	170-32-2164	09/28/41	09/12/63	2362.82	3729.57	2151.00	3729.57	1366.75
KILKEARY	170-34-7863	09/17/45	03/22/65	2292.54	3524.54	2034.00	3524.54	1232.00
KOZNIAK JOSEPH M	171-14-6226	08/27/18	09/23/86	7599.60	12315.85	17627.00	17627.00	10027.40
ELEAMOS	171-18-8037	05/20/20	06/27/51	7239.70	11715.32	13988.00	13988.00	6748.30
BEVEC FRANK P	171-18-8299	04/24/19	08/21/50	7166.90	10660.77	15123.00	15123.00	7956.10
BELL J	172-07-5254	12/01/17	02/16/48	7595.20	13533.82	22941.00	22941.00	15345.80
KOCIAN	172-12-0715	02/23/22	06/03/47	8905.77	17558.64	17641.00	17641.00	8735.23
HANNA HAROLD E	172-12-3485	09/24/20	04/23/52	6636.37	10755.67	12660.00	12660.00	6023.63
MONTGOMERY	172-14-1984	07/05/18	01/09/47	1006.91	1449.66	4496.00	4496.00	3489.09
POWELL LOUIS P	172-20-0506	12/31/24	04/17/47	7277.20	11810.57	13728.00	13728.00	6450.80
KEREKES	172-20-2341	11/28/25	07/12/51	7130.11	11509.48	11293.00	11509.48	4379.37
KRANZ JOHN M	172-20-2624	07/29/25	09/15/47	7377.95	11969.07	13592.00	13592.00	6214.05
PATRICK	172-20-4936	02/22/24	07/28/48	6427.97	10730.34	13681.00	13681.00	7253.03
SEVERINE	172-20-5185	12/25/25	01/20/47	7988.46	12825.58	13248.00	13248.00	5259.54
SUTCH RAYMOND	172-20-8079	01/17/27	05/01/51	6917.54	11229.54	10717.00	11229.54	4312.00
UDODOW	172-20-8278	07/23/25	01/17/47	9023.67	14635.04	14483.00	14635.04	5611.37
DEGENNARO	172-20-8313	10/25/26	10/08/63	2526.36	3970.11	4616.00	4616.00	2089.64
AGOSTINELLI JOHN	172-20-8351	02/23/28	05/12/52	5706.02	11298.14	9834.00	11298.14	5592.12
LEONE TONY	172-20-8425	08/04/27	10/10/52	4428.42	8971.42	9228.00	9228.00	4799.58
JOSPH PHILIP A	172-20-8586	10/27/26	09/30/48	5594.59	8308.84	11095.00	11095.00	5500.41
CASSIDY	172-20-9119	12/02/26	01/14/64	2527.84	4019.71	4534.00	4534.00	2006.16
ROGALSKY STANLEY	172-20-9414	11/24/24	07/12/51	5678.23	9172.10	11371.00	11371.00	5692.77
MCNAMARA EUGENE	172-20-9920	10/26/27	10/17/66	1170.65	1988.77	2937.00	2937.00	1766.35
MALIK THOMAS G	172-20-9921	12/01/27	03/20/51	7191.39	11657.39	10317.00	11657.39	4466.00
MICHELUCCI	172-30-7796	01/27/37	03/09/67	1025.06	1256.06	1674.00	1674.00	648.94
ZULLO	172-30-8871	04/01/38	11/01/66	1328.10	1934.47	1745.00	1934.47	606.37
MOODY	172-30-9149	06/18/38	12/11/63	2233.14	3522.89	2546.00	3522.89	1289.75
PHILLIPS	172-30-9263	03/24/38	01/14/64	2382.05	3758.42	2559.00	3758.42	1376.37
BRACK FRANK L	172-30-9624	07/14/39	01/14/64	1666.52	2725.27	2316.00	2725.27	1058.75
WOZNIAK	173-12-1180	02/16/21	04/13/56	3704.02	7351.89	10129.00	10129.00	6424.98
MAZZA JOHN J	173-16-6852	01/10/23	07/23/47	6804.89	11049.51	14986.00	14986.00	8181.11
MICIK GEORGE N	173-18-8849	11/27/21	10/28/63	2244.32	3562.94	5441.00	5441.00	3196.68

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AUDRETTI	173-20-1231	12/26/27	03/05/53	6595.70	10724.82	9426.00	10724.82	4129.12
ROMANO	173-20-1566	12/19/25	01/12/53	5495.01	8825.26	9600.00	9600.00	4104.99
HOOD	173-20-1574	07/28/27	02/20/63	2947.63	4670.50	5009.00	5009.00	2061.37
WRIGHT CLYDE R	173-20-1967	08/09/27	05/06/48	7016.65	10385.40	11055.00	11058.00	4041.35
COLASKI STAN	173-20-4785	09/19/25	03/29/51	12027.99	18986.86	13059.00	18986.86	6958.87
ABRAHAM	173-20-8032	03/09/26	06/11/47	7956.43	12634.18	13130.00	13130.00	5173.57
MCKAHAN CLARENCE L	173-20-8766	03/13/27	08/28/50	5746.35	8373.97	10402.00	10402.00	4655.65
CLENDANIEL	173-20-9735	12/05/25	03/26/47	9296.03	15128.78	13066.00	15128.78	5832.75
MONTECALVO JAMES	173-24-2653	12/13/30	03/01/63	1666.03	3119.40	3784.00	3784.00	2117.97
KRAEER	173-42-1920	08/28/48	09/29/69	954.03	1233.15	767.00	1233.15	279.12
CHRISTY BEN	174-07-0434	06/11/15	01/24/49	8205.71	13297.33	19583.00	19583.00	11377.29
LEMONAKIS PAUL	174-12-6099	08/19/19	07/07/52	4317.60	10852.97	13273.00	13273.00	8955.40
TERPIN JOSEPH L	174-12-9663	07/13/20	09/28/48	7126.44	11553.94	15452.00	15452.00	8325.56
KENNERS	174-14-0238	08/04/20	04/02/51	7513.92	12076.17	13360.00	13360.00	5846.08
SIKORA TED	174-14-0426	03/05/21	05/02/49	8159.88	13232.25	14507.00	14507.00	6347.12
KARLOVICH	174-18-5613	12/15/19	04/28/41	6823.73	10125.10	19255.00	19255.00	12431.27
LEYDA	174-18-5737	09/27/18	11/11/63	2137.83	3389.08	6369.00	6369.00	4231.17
VARGO ANDY	174-18-9729	10/15/19	07/22/47	6680.03	10818.78	15975.00	15975.00	9294.97
GRETSKY	174-22-0111	10/23/28	02/08/60	3511.65	5350.02	5641.00	5641.00	2129.35
HATT CLAIR E	174-22-0790	11/12/27	01/25/51	7537.51	12215.26	10482.00	12215.26	4677.75
ENGOTT DONALD L	174-22-2386	07/31/30	03/04/63	3061.50	4861.37	4292.00	4861.37	1799.87
KACVINSKY	174-22-2438	08/15/29	02/25/53	4553.33	6786.33	7829.00	7829.00	3275.67
FURGIUELE JOSEPH	174-22-6168	08/30/31	06/26/63	2075.49	4164.11	3693.00	4164.11	2088.62
OGRODOWSKI	174-22-9944	04/21/28	08/19/63	2433.58	3829.20	4413.00	4413.00	1979.42
BAENS ALBERT	175-12-2408	07/15/18	08/30/39	8036.38	13031.75	23103.00	23103.00	15066.62
PASHKEVICH	175-16-0442	08/29/20	02/28/63	2541.21	4023.46	6161.00	6161.00	3619.79
MICINSKI STANLEY E	175-16-5718	05/08/19	08/06/45	3886.88	8033.38	17698.00	17698.00	13831.12
MILLER	175-18-0186	02/04/19	03/07/47	4754.49	7441.86	16565.00	16565.00	11808.51
DIANSKI EDMUND A	175-18-2284	10/19/22	10/14/46	7531.21	12969.33	15823.00	15823.00	8291.79
PAWLISH JOHN	175-18-2288	05/13/21	08/13/47	6643.56	10753.43	15050.00	15050.00	8406.44
BISSIERE	175-18-4806	07/18/22	10/14/46	10510.51	17065.13	17832.00	17832.00	7321.49
FOLKENS	175-20-7984	07/16/25	08/27/52	7452.27	14719.14	12208.00	14719.14	7266.87
AQUILINO TONY	175-22-0423	05/24/30	04/29/53	4640.18	8114.80	8011.00	8114.80	3474.62
QUESSEL LAWRENCE C	175-22-0430	09/06/20	05/11/45	7871.95	12819.20	11954.00	12819.20	4947.25
RASFET WALTER	175-22-0442	10/17/29	03/03/52	5934.95	10622.32	8794.00	10622.32	4687.37
KIEFER JOHN W	175-22-0593	12/30/27	10/20/63	2190.84	3451.71	4278.00	4279.00	2087.16
LIKAR HENRY T	175-22-2334	08/08/27	10/28/52	6678.39	10720.89	9573.00	10720.89	4042.50
ANDERSON ROBERT	175-22-3128	06/12/28	12/16/63	2151.76	3480.01	4224.00	4224.00	2072.24
KELSEY	175-22-4614	11/02/29	03/09/48	7778.31	13861.31	10641.00	13861.31	6083.00
SUBENKO STEPHEN	175-22-6739	04/06/30	03/03/49	12707.44	19926.19	11907.00	19926.19	7218.75
WARD RONALD L	176-24-6681	03/30/31	07/22/52	7643.23	11685.73	8440.00	11685.73	4042.50
PAZZAI	176-24-9171	09/06/33	02/25/63	3487.56	5556.93	3627.00	5556.93	2069.37
SKWARLO WAYNE	176-36-6137	12/06/44	06/19/67	1036.43	1498.43	1332.00	1498.43	462.00
MCAVOY	176-38-6727	02/21/47	07/13/66	1003.25	1484.50	1328.00	1484.50	481.25
GARRETT	177-18-1536	05/28/20	09/29/47	6602.68	10414.18	15423.00	15823.00	9220.32
ADDONDANZA HERK	177-18-1591	02/12/21	01/27/47	7089.70	11526.82	15457.00	15457.00	8367.30
HAMMETT LEROY R	177-18-4714	02/25/20	12/08/47	6936.16	9554.16	15558.00	15558.00	8621.84
SVITEK	177-18-6001	09/17/16	10/01/48	14728.82	22919.69	18456.00	22919.69	8190.87
TOTH STEVE	178-09-1645	11/27/18	11/06/63	2920.63	4614.63	6564.00	6564.00	3643.37
KIMMINS MELVIN	178-09-3154	02/07/13	08/31/64	2092.53	3363.03	8147.00	8147.00	6054.47

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MORRIS ERNEST R	178-09-5156	12/17/14	10/02/47	8742.53	14683.28	20661.00	20661.00	11918.47
KILLEN JR HARRY E	178-09-5204	11/13/15	03/21/53	6249.57	11167.94	15371.00	15371.00	9121.43
DUNN	178-09-5922	06/17/13	11/17/69	676.24	868.74	3531.00	3531.00	2854.76
DAYAK MIKE	178-12-2650	10/12/19	03/22/56	7422.50	12138.75	11479.00	12138.75	4716.25
CHRIST JIM	178-12-4156	11/06/22	03/25/63	2656.69	4206.31	6045.00	6045.00	3388.31
SPICER OTIS J	179-30-0424	02/11/38	02/10/60	3981.12	6483.62	3711.00	6483.62	2502.50
BAILS	179-30-0799	05/22/38	01/10/67	636.70	1291.20	1632.00	1632.00	995.30
COLEY	179-30-0975	08/30/35	04/30/63	2707.05	4295.17	3075.00	4295.17	1588.12
CHAPPO	181-12-2113	06/11/20	11/07/46	7074.24	11434.36	16431.00	16431.00	9356.76
SEDORA	181-12-3263	07/17/21	03/03/52	6042.01	9882.38	12577.00	12577.00	6534.99
ENCANDELA JOHN J	181-16-0854	10/03/19	04/03/63	2614.98	4183.85	6450.00	6450.00	3835.02
FRYE	181-16-1279	02/19/20	10/18/48	8256.59	13405.96	15688.00	15688.00	7431.41
YESENCHAK JOHN	181-16-1280	09/05/22	07/23/51	6581.14	10623.64	13043.00	13043.00	6461.86
RENDZIAK JOSEPH	181-16-5167	09/20/17	11/07/66	1439.93	2104.05	4710.00	4710.00	3270.07
STAUFFER	181-16-9201	02/06/22	12/04/41	9317.68	15160.05	19652.00	19652.00	10334.32
ZANAGLIO	181-28-0577	01/03/30	02/18/63	2732.94	4224.81	2809.00	4224.81	1491.87
HARD ROBERT G	181-28-1410	02/29/35	05/27/63	2672.91	4222.53	3203.00	4222.53	1549.62
KESNACK	181-28-2616	07/21/37	02/13/63	2679.83	4239.08	2955.00	4239.08	1559.25
BAILS	181-34-0777	07/05/40	09/06/66	1363.26	2017.76	1616.00	2017.76	654.50
DEROSA	181-34-0996	04/22/42	10/24/53	2340.64	3659.26	2769.00	3659.26	1318.62
MURRAY WILLIAM D	181-34-2342	03/02/43	03/16/70	397.24	551.24	773.00	773.00	375.76
CHNIEL	182-12-1321	01/08/22	02/01/57	3069.23	7159.85	11987.00	11987.00	8917.77
MCCLOSKEY JAMES F	182-12-4980	08/05/22	09/16/63	2483.38	3907.88	5739.00	5739.00	3255.62
KIMS LEO A	182-12-7596	06/11/22	07/22/47	8134.61	13206.98	16420.00	16420.00	8285.39
LIVALSI	182-12-9087	03/31/24	01/20/64	2019.00	3135.50	5104.00	5104.00	3085.00
TWARDY	182-12-9659	04/13/23	08/18/47	9986.45	16464.07	16347.00	16464.07	6477.62
ASHCRAFT JOHN	182-14-5620	08/27/23	06/17/63	2062.24	3342.36	5406.00	5406.00	3343.76
FRAGAPANE	182-32-6232	03/02/41	09/25/63	2226.06	3467.68	2699.00	3467.68	1241.62
BALLENTYNE ROBERT J	182-32-6316	08/14/40	06/14/69	792.01	1013.38	937.00	1013.38	221.37
KASKIE ROBERT	183-24-2736	08/29/29	09/12/63	1970.49	3106.24	3822.00	3822.00	1851.51
TAUFER	183-24-3348	08/30/31	04/01/52	6256.31	10269.93	7865.00	10269.93	4013.62
FRANK MARY	183-24-3904	08/24/32	09/06/55	7011.41	11708.41	6767.00	11708.41	4697.00
FRANK DONALD J	183-24-5503	10/13/33	03/11/63	2175.42	5014.79	3525.00	5014.79	2839.37
RUBIS RUDOLPH	183-24-6043	11/03/29	04/03/32	7569.00	12304.50	9072.00	12304.50	4735.50
STAYDURAR	183-24-6617	11/17/30	03/15/56	5647.72	9189.72	6915.00	9189.72	3542.00
MCCAFFERY	183-24-7372	10/29/30	02/10/64	1578.59	2531.46	3411.00	3411.00	1832.41
MARINELLI ALFREDO	183-26-1427	02/22/34	09/14/64	1889.84	2948.59	2938.00	2948.59	1058.75
BOCK	183-26-5102	11/29/34	03/21/56	3846.23	5771.23	5176.00	5771.23	1925.00
PREVADE	183-28-1764	09/29/38	01/20/64	2628.36	4158.73	2480.00	4158.73	1530.37
BARTHELOMY	183-32-2237	03/18/41	11/15/65	1827.26	2789.76	1771.00	2789.76	962.50
OZELSKI	184-14-0479	05/20/20	11/11/63	2152.25	3384.25	6015.00	6015.00	3862.75
RUCKI JR PETE	184-14-1225	03/24/21	02/05/48	9599.51	17463.13	15745.00	17463.13	7863.62
HORNER	184-14-1802	11/24/23	09/29/69	655.76	1060.01	2137.00	2137.00	1481.24
KAMIA WALTER J	184-14-2253	09/04/21	09/03/46	8561.07	14162.82	15135.00	15135.00	6573.93
CHERPAK MICHAEL	184-14-3093	05/26/21	04/08/63	1753.74	3832.74	6047.00	6047.00	4293.26
SANTEE EARNEST E	184-14-3773	02/02/20	12/04/67	1298.61	1827.98	3567.00	3567.00	2268.39
LUGINSKI STANLEY	184-14-5589	11/21/20	03/04/63	2221.59	3520.96	6043.00	6043.00	3821.41
STADNIK STANLEY J	184-14-9599	01/30/17	01/28/47	9011.52	14622.89	20003.00	20003.00	10991.48
KAPPELER SR A L	185-12-0029	03/30/22	08/23/40	6787.57	10127.44	18932.00	18932.00	12144.43
STEELE SR FLOYD H	185-12-0192	10/25/25	07/19/62	2682.84	4309.46	5426.00	5426.00	2745.16

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RUSH	185-12-0852	11/23/18	11/11/46	10536.55	17139.30	18303.00	18303.00	7766.45
FULLERTON HARRY	185-12-2103	10/27/21	07/16/62	2157.72	4381.09	6156.00	6156.00	3998.28
DAMPF	185-12-4002	04/18/22	07/12/63	985.56	3863.43	6134.00	6134.00	5148.44
TOTH	185-12-4618	01/26/22	09/30/48	6362.67	11877.79	15492.00	15492.00	9129.33
DEGENNARO	185-12-4619	04/12/21	09/18/52	6564.12	10654.74	12431.00	12431.00	5866.88
CERENZIA	185-12-7291	06/14/22	04/07/69	796.17	1017.54	2576.00	2576.00	1779.83
KANIA EDWARD	185-12-8358	01/05/23	01/12/49	5479.77	8386.52	13613.00	13613.00	8133.23
BUECHEL	185-16-0085	05/27/22	04/28/41	8693.16	13948.41	19647.00	19647.00	10953.84
PROGRA	185-16-0472	11/08/22	05/03/60	3872.51	6307.63	7887.00	7887.00	4014.49
DIBB JAMES A	185-16-5465	05/27/23	04/09/63	2212.34	4127.71	5988.00	5988.00	3775.66
KOTYK FRANK	185-16-6056	02/08/22	09/18/52	6086.78	9888.65	13015.00	13015.00	6928.22
BIANCHIN BALENTINO	185-16-6853	08/21/21	10/09/63	3182.37	5030.37	5638.00	5638.00	2455.63
GARRETT DONALD L	186-20-0559	07/31/24	08/14/50	6631.24	9980.74	12596.00	12596.00	5964.76
HAUSEL	186-20-2050	03/18/27	08/02/43	6180.33	8490.33	13015.00	13015.00	6834.67
LONGO JOHN P	186-20-2429	03/21/27	08/06/51	2581.38	5671.00	9470.00	9470.00	6888.62
GAGICH JOHN	186-20-3107	03/29/25	06/03/63	2845.42	4751.17	5448.00	5448.00	2602.58
MONTGOMERY TONY W	186-20-3418	02/01/26	05/28/51	5969.80	9646.55	10951.00	10951.00	4981.20
MONTGOMERY HAROLD W	186-20-3420	04/17/27	05/28/51	6782.38	10988.50	10667.00	10988.50	4206.12
BARSODY	186-20-4995	01/17/28	05/06/48	7909.73	12654.85	11505.00	12654.85	4745.12
KERN FRANK A	186-20-5947	05/11/26	05/01/47	8484.64	16656.26	14046.00	16656.26	8171.62
GEIZEL FRANK E	186-20-6170	11/25/28	10/31/66	1120.38	1669.00	2729.00	2729.00	1608.62
DIGANGI PHILIP	186-20-6692	05/07/25	05/20/63	2423.90	3790.65	5263.00	5263.00	2839.10
CREGUT NAMAR	186-24-9436	02/21/28	04/14/48	8626.82	13997.57	11796.00	13997.57	5370.75
MARY	186-30-0175	12/07/36	09/23/63	2302.27	3659.39	2752.00	3659.39	1357.12
CROSS	186-30-0261	07/13/41	06/30/66	1412.92	2115.54	1595.00	2115.54	702.62
COMBROWSKI KENNETH R	186-30-2024	08/20/39	04/29/63	2367.73	3782.60	2468.00	3782.60	1414.87
FELIX	186-30-2187	12/08/38	11/15/65	1394.07	2125.57	1882.00	2125.57	731.50
SHERMAN	186-30-2486	10/02/37	10/01/63	2512.16	3994.41	2640.00	3994.41	1482.25
OPENRRIER	187-14-9808	05/16/22	11/16/53	4764.92	7700.54	11858.00	11858.00	7093.08
DURKAN ANTHONY D	187-20-0076	08/04/28	02/10/60	3891.28	5979.90	6065.00	6065.00	2173.72
SVAREY	187-20-0936	02/16/26	11/11/46	10542.43	15316.43	13948.00	15316.43	4774.00
DAMICO CARMINE	187-20-2589	05/10/25	04/29/52	8767.52	14234.52	12237.00	14234.52	5467.00
CRAMER	187-20-4479	10/11/26	06/02/47	9695.77	15788.39	13111.00	15788.39	6092.62
OFATT JAMES	187-20-4861	02/12/29	01/20/64	2288.63	3934.50	4069.00	4069.00	1780.37
LAVRICH HENRY	187-20-5092	01/22/30	05/15/63	1877.21	3109.21	3930.00	3930.00	2052.79
WILLIAMS MARTIN F	187-20-6607	09/14/27	02/06/53	6298.05	10937.30	9500.00	10937.30	4639.25
PROGAR EDWARD	187-20-7407	08/03/27	04/21/60	3958.42	6586.04	6125.00	6586.04	2627.62
BOZEK	187-20-9101	04/11/26	06/11/47	8064.72	13002.34	13211.00	13211.00	5146.28
TOMCYK JOE	187-20-9172	01/25/27	11/16/50	12344.37	19293.62	12577.00	19293.62	6949.25
LASKOWSKI THEODORE	187-20-9644	04/25/28	01/28/53	5222.34	8504.46	9048.00	9048.00	3825.66
KAZAK STEPHEN J	187-22-1684	12/25/27	07/12/50	8478.95	13570.57	10924.00	13570.57	5091.62
MANCINI ROCK	187-22-4340	12/16/21	05/18/48	7184.01	11659.63	13994.00	13994.00	6809.99
CUSHMA TOM	187-22-7318	01/04/29	10/07/47	6641.97	10742.22	10759.00	10759.00	4117.03
SERNOPEK	187-22-8617	09/13/29	10/16/63	2332.08	3679.58	3899.00	3899.00	1566.92
MATULA FERDINAND	187-34-2883	04/07/42	07/11/66	1117.12	1646.49	1746.00	1746.00	629.88
SOBRASKY JAMES	187-34-3970	10/08/45	09/15/66	1284.35	2208.35	1533.00	2208.35	924.00
CRAIG	187-34-4802	04/07/42	07/22/63	2168.05	3390.42	2736.00	3390.42	1222.37
DANS	187-34-4899	12/18/45	05/12/67	984.94	1495.06	1280.00	1495.06	510.12
GILL ERNEST	187-34-4953	10/16/41	08/01/66	606.28	1231.90	1404.00	1404.00	797.72
CHARNESKY	187-34-4994	10/03/44	11/07/66	1107.02	1905.89	1516.00	1905.89	798.87

MCGRAW EDISON - CANONSBURG BENEFIT ILLUSTRATIONS FOR CIVIL ACTION FILE NO. 75-01

NAME	SOC-SEC-NO	DATE OF BIRTH	DATE OF HIRE	COMPANY PORTION AT $ 20 3/8	COMPANY PORTION AT $ 30	PRESENT VALUE PENSION BENEFIT	GREATER CO. AT $30 & PENSION	EXCESS PLAN BENEFIT OVER CO.$20 3/8
LESSO	188-18-1431	04/20/21	02/06/53	5294.58	8788.45	11956.00	11956.00	6661.42
RYBACKI JOSEPH S	188-18-1718	06/22/20	09/17/46	9814.59	15733.96	17164.00	17164.00	7349.41
POPOVICH CARL	188-18-3224	03/22/24	12/11/50	6899.95	11221.57	12751.00	12751.00	5851.05
TOTH GEORGE	188-18-3614	12/18/17	08/30/48	5028.72	9716.09	17078.00	17078.00	12049.28
SIMMS	188-18-3845	11/20/23	12/09/46	8006.10	11076.47	14451.00	14451.00	6444.90
KUBACKI S J	188-18-5190	04/02/21	04/29/52	8643.71	14052.96	13129.00	14052.96	5409.25
HATALSKY CHARLES J	188-20-1139	09/23/27	10/08/51	11717.15	18618.27	11481.00	18618.27	6901.12
TOTH FRANK	188-20-2177	11/17/27	01/23/64	1783.76	2794.38	4061.00	4061.00	2277.24
RADOMSKI CHARLES	188-20-4035	01/24/29	03/11/63	3044.15	4834.40	4514.00	4834.40	1790.25
CANCILLA FRANK	189-12-1827	05/29/22	09/05/51	6854.55	11012.55	13804.00	13804.00	6949.45
HRUKAT	189-12-1867	10/20/23	07/15/63	2653.29	4174.04	5574.00	5574.00	2920.71
POWELL PETER J	189-12-2523	08/04/22	04/18/47	8039.13	13024.88	15609.00	15609.00	7569.87
MCCLAIN	189-12-4874	01/26/24	11/12/63	1694.91	3417.78	5246.00	5246.00	3551.09
MARKOVICH JOSEPH P	189-12-5023	06/18/18	04/07/47	13644.19	21546.31	19881.00	21546.31	7902.12
PATRINA	189-12-5206	04/30/23	09/29/47	7102.68	11587.93	15046.00	15046.00	7943.32
AMISTADE IRWIN B	189-12-6421	05/08/22	07/02/51	6966.13	11836.38	14110.00	14110.00	7143.87
MISNOSKY	189-12-8670	07/24/24	08/06/51	6725.83	10883.83	12382.00	12382.00	5656.17
BRUNO CARL F	189-12-9683	12/23/23	06/23/47	7043.63	12250.75	14520.00	14520.00	7476.37
MAUGH WALTER	189-32-2855	07/23/40	04/29/63	2817.39	4444.01	2533.00	4444.01	1626.62
CASTER GEORGE	189-32-3348	07/17/40	01/30/67	1167.19	1686.94	1520.00	1686.94	519.75
FRANKO JOHN	189-32-4130	10/01/42	10/11/65	1638.00	2485.00	2002.00	2485.00	847.00
LIVALSI	189-32-4935	08/21/43	10/13/66	1484.02	2215.52	1682.00	2215.52	731.50
KUDACK PETE	190-01-1383	03/16/19	01/23/67	817.91	1174.03	4200.00	4200.00	3382.09
COLAIZZO	190-24-3713	04/16/31	06/25/59	1569.19	4177.56	6116.00	6116.00	4546.81
PRITTS	190-24-4992	01/31/33	12/18/63	2507.06	3921.93	3337.00	3921.93	1414.87
PANKAS	190-24-7684	09/19/29	07/12/50	8185.87	13335.24	9810.00	13335.24	5149.37
SMOROSE ANTHONY	191-01-6508	05/21/18	04/28/52	6088.94	9990.81	14878.00	14878.00	8789.06
PERRINE	191-03-2646	01/12/20	10/08/63	2536.13	3989.50	6150.00	6150.00	3613.87
BETZ	191-05-1363	07/07/14	03/04/63	1592.53	3738.90	8787.00	8787.00	7194.47
KOHLICH FRANK	191-05-1505	10/17/17	07/23/47	5458.88	8105.75	17462.00	17462.00	12003.12
FELIX	191-05-1536	11/16/14	02/08/60	3207.75	5209.75	10667.00	10667.00	7459.25
DEWALT LEWIS A	191-05-1630	06/24/19	06/03/47	7663.84	12447.46	17218.00	17218.00	9554.16
GAYARSKI	191-05-1680	09/05/16	09/15/50	6289.23	11034.35	16081.00	16081.00	9791.77
MCCOLLUM CHARLES	191-05-1699	12/01/17	08/22/50	7320.25	12556.25	16342.00	16342.00	9021.75
JONES RONALD H	191-20-2396	01/02/29	03/03/64	2214.58	3475.45	3927.00	3927.00	1712.42
AMOS	191-28-7817	04/17/36	03/04/63	2786.31	4403.31	3107.00	4403.31	1617.00
KVIZDOS	191-28-8570	02/07/35	04/09/63	2276.07	4355.07	3241.00	4355.07	2079.00
BRODNICK	191-28-8800	10/27/35	10/07/63	1857.04	3137.16	2806.00	3137.16	1280.12
HELAY HERMAN R	191-28-8901	07/28/34	09/13/63	2615.25	4193.75	3277.00	4193.75	1578.50
KEBART CHARLES W	191-28-9155	03/13/36	03/09/60	4104.42	7030.42	4153.00	7030.42	2926.00
BORZA AL	191-28-9772	11/16/28	07/28/52	6524.32	10586.07	9147.00	10586.07	4061.75
LASKOWSKI ALBERT	192-09-5356	03/06/15	10/31/63	2373.87	4491.37	7925.00	7925.00	5551.13
HATYUF PETE	192-09-5422	06/06/13	10/06/47	5737.12	12647.87	23104.00	23104.00	17366.88
HOOD	192-09-5632	11/05/17	09/21/64	1609.38	2514.13	6091.00	6091.00	4481.62
HOGG WALTER	192-10-6834	03/07/16	02/15/46	7817.25	12667.50	20371.00	20371.00	12553.75
REGLE FRANK W	192-18-0025	01/31/23	09/07/50	7064.82	11444.19	13635.00	13635.00	6570.18
URSO BEN	192-18-2369	02/12/23	01/05/51	5506.07	8993.32	12853.00	12853.00	7346.93
OBRYAN GROVER	192-18-3022	10/10/23	07/31/51	7192.61	11716.36	12619.00	12619.00	5426.39
SKARIAT	192-18-4814	11/17/22	09/19/52	6350.66	10152.53	12386.00	12386.00	6035.34
MORRISON	192-18-5127	03/10/24	09/09/63	1756.58	2757.58	5155.00	5155.00	3398.42

MCGRAW EDISON - CANONSBURG BENEFIT ILLUSTRATIONS FOR CIVIL ACTION FILE NO. 75-81

NAME	SOC-SEC-NO	DATE OF BIRTH	DATE OF HIRE	COMPANY PORTION AT $ 20 3/8	COMPANY PORTION AT $ 30	PRESENT VALUE PENSION BENEFIT	GREATER CO. AT $30 & PENSION	EXCESS PLAN BENEFIT OVER CO.$20 3/8
BOBER	192-18-6341	08/04/23	12/01/47	8047.58	13062.20	14501.00	14501.00	6453.42
AHMESH SAM	192-18-7530	10/31/22	09/25/47	7567.31	12196.93	15203.00	15203.00	7635.69
PAVCIC	192-18-9938	10/17/23	03/05/47	8914.99	15219.36	15352.00	15352.00	6437.01
DIXON	193-03-6234	02/28/14	04/10/67	965.36	1456.23	5376.00	5376.00	4410.64
SZYMATIS	193-03-6341	04/22/17	10/06/47	6847.84	15539.21	24993.00	24993.00	18145.16
KOKLICH JOSEPH	193-07-8886	01/28/14	02/09/53	4906.25	8660.00	17139.00	17139.00	12232.75
MAZZA	193-07-9493	09/25/18	07/21/47	5884.23	9512.85	16705.00	16705.00	10820.77
NYEK MICHAEL	193-07-9604	10/22/15	06/10/47	6907.22	12364.59	19422.00	19422.00	12514.78
ROZANC JOHN	193-07-9621	02/07/16	10/07/63	1417.37	3698.49	7381.00	7381.00	5963.63
CRICKLEY	193-10-0143	10/02/13	08/18/52	5066.32	8675.69	17526.00	17526.00	12459.68
HEVCZ	193-22-4750	12/28/26	09/07/65	2024.05	3102.05	3725.00	3725.00	1700.95
MATYUF	193-22-8341	10/24/28	01/08/53	6093.33	9837.45	8840.00	9837.45	3744.12
MCORE	194-01-0772	06/05/15	09/08/47	6040.38	10612.25	20259.00	20259.00	14218.62
DICHAK JOSEPH L	194-01-1746	10/01/14	06/07/48	8202.11	13312.98	20006.00	20006.00	11803.89
SCOTT	194-01-1763	01/14/17	12/19/46	9060.23	15547.48	20220.00	20220.00	11159.77
KUSHMA	194-01-1815	06/10/15	05/05/47	7078.94	11987.69	20654.00	20654.00	13575.06
FONSETIC	194-14-0878	03/31/23	03/25/63	2289.33	4089.20	6015.00	6015.00	3725.67
SOLORAY	194-22-0531	07/22/29	02/20/67	784.03	1563.65	2599.00	2599.00	1814.97
MULLINS	194-22-3247	05/30/29	07/22/63	2373.44	3759.44	4203.00	4203.00	1829.56
FRANTZ	194-22-3768	01/27/29	01/24/49	7673.94	12245.81	10624.00	12245.81	4571.87
PIMION	194-30-1276	11/30/36	02/20/63	2603.35	4124.10	2941.00	4124.10	1520.75
HOTTEL	194-30-1652	09/16/33	03/15/56	5216.40	8469.65	5835.00	8469.65	3253.25
KOUPIARIS	194-30-1916	06/16/42	10/12/68	1838.10	2858.35	2378.00	2858.35	1020.25
ALLEN ANTHONY A	195-09-7211	04/09/15	08/28/46	7092.20	11760.32	21174.00	21174.00	14081.80
YANCHAK MICHAEL	195-18-0126	10/02/22	07/18/47	13107.99	20730.99	17477.00	20730.99	7623.00
YESENCHAK CHARLES	195-18-0306	11/26/21	08/07/51	6366.71	10322.58	12245.00	12245.00	5878.29
FURMARICH	195-18-0499	01/24/23	02/23/60	2760.26	3713.13	7334.00	7334.00	4573.74
WIENCEK JOSEPH E	195-18-1588	03/11/26	09/29/47	7058.19	12409.69	12983.00	12983.00	5924.81
MOUNTFORD	195-18-1947	01/07/22	09/04/46	10474.60	17038.85	17863.00	17863.00	7388.40
JURCIC JOHN	195-18-2453	02/11/25	05/05/48	7833.00	12712.87	13492.00	13492.00	5659.00
MARMOR FRANK L	195-18-2658	01/27/22	02/19/51	7818.26	12467.13	14485.00	14485.00	6666.74
BONGIOVANNI	195-18-2822	09/10/24	10/27/52	7106.61	11591.86	11916.00	11591.86	4485.25
KOLLJESKI	195-18-3470	09/29/23	07/23/51	5404.52	7839.64	11675.00	11675.00	6270.48
CHIKLINSKI ALBERT R	195-18-4307	11/14/24	02/05/47	8473.19	13470.69	14227.00	14227.00	5753.81
CHERPAK STEPHEN	195-18-5125	10/06/24	03/28/51	8415.52	13622.64	12534.00	13622.64	5207.12
ALTIERI ONORINO	195-18-5942	09/03/24	02/25/47	8010.26	13044.13	14083.00	14083.00	6072.74
DEVITAS JR ERNICO	195-18-7340	08/14/23	02/25/63	2085.69	3567.94	5608.00	5608.00	3522.31
STANISA FRANK A	195-18-8957	10/01/24	04/07/47	8448.50	13896.25	14210.00	14210.00	5761.50
LESKO JOSEPH	195-18-9142	07/07/25	08/17/48	9004.46	14663.96	13840.00	14663.96	5659.50
ATCHISON THOMAS	195-24-0758	11/20/26	10/09/51	7761.86	13103.73	10951.00	13103.73	5341.87
DELVECCHIO ENNIO	195-24-0959	02/16/23	07/27/51	7765.09	12596.84	13551.00	13551.00	5785.91
MALACKY GEORGE E	196-12-0142	03/13/24	03/25/47	9476.68	15319.05	15377.00	15377.00	5900.32
KCRDELLA	196-12-0569	11/06/23	04/23/47	7951.71	12879.71	14747.00	14747.00	6795.29
SMALL	196-12-1478	04/22/24	03/19/47	7139.15	11585.90	14467.00	14467.00	7327.85
DOMBROWSKI ED J	196-12-2396	04/09/22	09/23/46	7342.84	11982.09	16488.00	16488.00	9145.16
SZTUKOWSKI WILLIAM	196-12-2653	01/10/23	12/18/63	1544.01	3459.38	5509.00	5509.00	3964.99
WISE	196-26-7745	09/02/31	03/12/56	5007.00	8164.00	6407.00	8164.00	3157.00
FLEMING	196-26-7807	09/28/13	04/16/62	1517.49	3153.74	10632.00	10632.00	9114.51
MAZE CLYDE	196-26-8966	05/01/34	10/16/63	2197.08	3506.08	3156.00	3506.08	1309.00
LEWIS	196-26-9475	06/24/34	04/09/63	2475.35	3919.10	3346.00	3919.10	1443.75

MCGRAW EDISON - CANONSBURG BENEFIT ILLUSTRATIONS FOR CIVIL ACTION FILE NO. 75-81

NAME	SOC-SEC-NO	DATE OF BIRTH	DATE OF HIRE	COMPANY PORTION AT $ 20 3/8	COMPANY PORTION AT $ 30	PRESENT VALUE PENSION BENEFIT	GREATER CO. AT $30 & PENSION	EXCESS PLAN BENEFIT OVER CO.$20 3/8
STOPPERICH	196-26-9815	11/01/35	02/20/63	2521.54	4003.79	3076.00	4003.79	1482.25
AUGOTT	197-28-4249	07/08/39	12/30/63	2455.78	3861.03	2462.00	3861.03	1405.25
COLE	197-34-5735	10/11/45	12/19/66	1257.68	1854.43	1410.00	1854.43	596.75
KOZORA	197-34-6363	08/05/43	02/10/64	2000.59	3107.46	2320.00	3107.46	1106.87
PASTERCHALK RONALD	197-34-6815	10/11/43	12/06/65	1250.33	1933.70	1742.00	1933.70	683.37
BOYLE DONALD L	197-34-6856	10/10/42	12/05/66	1160.44	1709.06	1608.00	1709.06	548.62
HEWITT	197-34-7050	04/27/45	05/03/71	186.58	225.08	451.00	451.00	264.42
SCHMIDT EDWARD J	198-24-0050	03/17/31	02/25/63	2266.90	3951.27	3952.00	3952.00	1685.10
CLARK	198-24-4139	07/17/32	10/03/49	8058.44	13101.94	9035.00	13101.94	5043.50
WOZNY PETE	198-24-4141	02/17/33	09/19/49	7155.45	12016.07	8444.00	12016.07	4860.62
PALMER ELMER	198-24-4219	07/24/31	08/22/67	953.69	1329.06	2155.00	2155.00	1201.31
MILBROWER	198-32-3932	05/25/41	09/28/64	2168.30	3381.05	2043.00	3381.05	1212.75
CWIKLINSKI	198-32-4564	06/19/42	07/12/63	2346.93	3694.43	2822.00	3694.43	1347.50
BECARRI ERNEST L	199-10-9198	11/22/15	09/02/46	7102.36	11645.36	19862.00	19862.00	12759.64
BUCKELS SAMUEL H	200-01-5037	12/03/17	03/01/63	2682.29	4308.91	7304.00	7304.00	4621.71
PHILLIPS WALTER	200-01-7491	09/01/19	06/12/47	8485.18	13788.55	16465.00	16465.00	7979.82
CHRISTOPHER	200-03-1846	12/21/17	02/17/60	2747.12	4450.74	9205.00	9205.00	6457.88
TOLMER ALBERT	200-03-2179	05/16/17	07/12/63	1403.39	3184.01	7331.00	7331.00	5927.61
MCDAID WILLIAM	200-14-0516	10/23/23	03/25/63	2400.09	3805.34	5627.00	5627.00	3226.91
FLORIAN JR JOE	200-14-0530	07/15/26	12/12/46	6265.03	8892.65	12506.00	12506.00	6240.97
ZELINSKY RAMOND	200-14-2602	08/29/24	03/01/60	3775.66	6942.28	7291.00	7291.00	3515.34
PTAK JOHN	200-14-6525	10/26/22	10/07/63	985.49	2833.49	5426.00	5426.00	4440.51
HATINSKI RAYMOND	200-14-7746	01/24/27	05/15/63	2965.95	4688.82	4920.00	4920.00	1954.05
PALETTA SAMUEL	200-14-7904	12/07/26	04/08/48	7176.73	11575.35	11929.00	11929.00	4752.27
PETROS	200-20-1609	09/01/28	06/23/47	5720.52	10484.89	10821.00	10821.00	5100.48
JAUDY EARL R	200-20-9557	01/28/27	01/12/53	6105.79	12208.04	10303.00	12208.04	6102.25
SHERMAN	201-01-9071	06/13/19	10/22/52	3388.60	5323.22	13029.00	13029.00	9640.40
MICIK	201-03-1920	07/14/16	09/11/50	9149.47	14846.47	17453.00	17453.00	8304.53
GREGORIA	201-03-2037	12/19/11	10/01/47	6383.77	10349.27	24317.00	24317.00	17933.23
ARDENO	201-14-3810	10/24/25	10/17/51	7483.97	12113.59	11328.00	12113.59	4629.62
CUSHMAN	201-14-4454	12/17/24	07/08/47	7393.94	11956.19	13659.00	13659.00	6265.06
SUCCURRO JOHN	201-14-5078	02/27/26	06/02/47	7218.41	11674.78	12920.00	12920.00	5701.59
PIZZUTI	201-20-0877	10/13/26	08/06/51	5267.61	7731.61	9898.00	9898.00	4630.39
MILES	201-20-1724	04/05/29	04/19/45	8352.55	14166.05	12233.00	14166.05	5813.50
GOLICK	201-20-2206	09/26/28	09/29/47	6691.32	9482.57	10550.00	10550.00	3858.68
HAINEN EDWARD L	201-20-4524	05/25/27	09/08/50	6951.05	11465.17	11011.00	11465.17	4514.12
REHONIC ROBERT R	201-20-4852	11/27/29	05/17/48	8178.96	13328.33	10495.00	13329.33	5149.37
MORRIS	201-20-6793	04/04/28	05/20/63	2315.83	4356.33	4604.00	4604.00	2288.17
DUNN	201-20-8792	07/17/27	03/20/56	5726.87	9288.12	8524.00	9288.12	3561.25
YURAS	201-26-2790	04/27/35	02/17/60	3951.65	6396.40	4302.00	6396.40	2444.75
MORRIS ELDEN W	201-26-2914	06/18/34	04/20/60	3838.71	6216.08	4454.00	6216.08	2377.37
KOROWICKI	201-26-3621	04/16/37	09/18/63	2442.51	3847.76	2775.00	3847.76	1405.25
MARIN EDWARD G	201-26-4046	07/19/33	07/29/63	2436.85	4035.35	3469.00	4035.35	1598.50
BARNES	201-26-4666	01/16/34	03/25/63	2295.44	3642.94	3326.00	3642.94	1347.50
THOMAS TED	201-26-4760	02/15/33	03/25/63	2701.86	4318.86	3602.00	4318.86	1617.00
MCELHANEY	201-40-2492	08/16/50	12/30/69	834.29	1065.29	636.00	1065.29	231.00
MESZAROS RONALD A	202-28-1316	01/22/37	10/14/63	3106.61	4973.86	2898.00	4973.86	1867.25
GIEHLL	202-28-1675	06/05/38	10/07/63	2258.86	3567.86	2589.00	3567.86	1309.00
JUNGE LYLE	203-12-0639	03/12/23	10/23/47	990.93	1612.80	3227.00	3227.00	2223.07
BARRETT JOHN H	203-12-4428	11/30/25	11/26/47	7044.81	10567.56	12518.00	12518.00	5473.19

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POPECK	203-12-6245	09/02/23	12/16/63	1943.42	3627.79	5258.00	5258.00	3314.58
HANNA JAMES	203-12-8134	06/06/24	09/05/47	8389.59	13596.71	14740.00	14740.00	6350.41
MAVRICH ANTHONY R	203-12-9296	09/02/24	08/04/50	7418.07	12047.69	12413.00	12413.00	4994.93
BARBISH FRANK	203-12-9618	10/02/26	01/15/47	7901.80	13262.92	12741.00	13262.92	5361.12
SPILLER ROBERT	203-22-1958	07/29/30	03/23/53	7379.56	12557.81	8826.00	12557.81	5178.25
HAYES ROBERT W	203-22-3748	06/03/30	10/07/64	2186.94	3409.31	3534.00	3534.00	1347.06
BAER JAMES E	203-22-3877	03/08/30	09/15/52	5558.97	8253.97	8219.00	8253.97	2695.00
CHRISTOPHER	203-22-4169	06/19/28	06/04/51	5284.17	8046.54	9512.00	9512.00	4227.83
OSBORNE	203-30-7808	03/07/32	02/22/60	3261.31	5340.31	4836.00	5340.31	2079.00
LOMBARDI	204-16-5000	02/19/24	11/12/43	7380.58	12337.45	16099.00	16099.00	8718.42
ADAMS LINN R	204-36-2906	01/18/47	10/17/66	1250.85	1857.22	1373.00	1857.22	606.37
ADJACE	204-36-7040	05/31/46	05/01/67	896.88	1464.75	1273.00	1464.75	567.87
CHROPEK DAVID L	205-32-7555	04/28/41	10/31/66	912.41	1374.41	1459.00	1459.00	546.59
SHUBA	205-32-7727	03/18/41	11/29/65	1820.23	2744.23	1767.00	2744.23	924.00
DEEMS EDWIN F	205-32-8100	11/04/44	03/31/69	891.22	1141.47	988.00	1141.47	250.25
PETRO	205-32-8924	07/11/42	10/02/63	2422.72	3827.97	2815.00	3827.97	1405.25
LANTHER ROBERT H	206-01-5376	06/02/16	09/19/52	5162.94	9898.44	15583.00	15583.00	10420.06
HULL RALPH R	206-03-9753	03/07/20	10/23/43	2802.75	4824.00	6275.00	6275.00	3472.25
GROSSEK	206-05-0340	07/25/19	03/17/47	6327.47	10215.97	17007.00	17007.00	10679.53
HAINES JOHN C	206-18-3094	11/02/24	01/14/52	6060.16	9727.28	11294.00	11294.00	5233.84
KAKIAS JAMES	206-18-3608	10/25/25	10/02/47	9757.35	15830.72	13701.00	15830.72	6073.37
BRAHLER RAYMOND J	206-18-4344	07/24/26	07/02/45	5694.31	7840.68	12829.00	12829.00	7134.69
SIMMONS JAMES D	206-18-9004	05/23/27	01/07/48	9536.73	15456.10	12827.00	15456.10	5919.37
KOMOVIC	206-18-9855	04/18/25	10/11/46	7113.30	11531.17	13869.00	13869.00	6755.70
SHORTS	206-22-4762	02/23/30	04/09/63	1696.25	3861.87	4089.00	4089.00	2392.75
WASNIK	206-34-3979	11/25/44	08/15/67	572.74	1073.24	1209.00	1209.00	636.26
DHANS BERNARD	206-34-4110	01/16/43	03/03/64	2423.54	3761.41	2592.00	3761.41	1337.87
SPREPHAK	207-18-2860	07/14/26	02/05/53	4795.67	8780.42	10079.00	10079.00	5283.33
HRICAK	207-18-3459	09/20/26	10/25/43	6975.49	10575.24	13385.00	13385.00	6409.51
SMITH HOWARD R	207-18-5773	10/08/27	02/20/52	11050.02	17652.77	11174.00	17652.77	6602.75
SOHA JOHN	207-18-7311	07/26/26	05/28/51	12756.15	20157.77	13253.00	20157.77	7401.62
SCHRECK	207-18-7823	12/01/26	08/07/46	9613.00	15590.12	13380.00	15590.12	5977.12
PARRY	207-28-3750	02/11/37	03/25/63	2697.70	4266.57	2936.00	4266.57	1569.87
BORDA	207-28-3835	03/03/37	09/07/66	1141.21	1978.58	1875.00	1978.58	837.37
REAGAN	207-28-3965	04/24/37	04/21/69	584.03	757.28	1150.00	1150.00	565.97
JACKSON	207-28-4591	04/21/37	06/16/64	1402.89	2442.39	2931.00	2931.00	1528.11
KULISH	207-28-4941	01/31/36	11/30/65	1430.57	2171.69	2193.00	2193.00	762.43
BOCK JR	208-03-5877	03/15/13	07/17/41	7971.26	12889.63	28267.00	28267.00	20295.74
PRANDINI BRUNO	208-09-7519	12/08/16	09/11/50	7396.60	11968.47	16171.00	16171.00	8774.40
UDODOW	208-09-8392	02/04/20	07/24/52	5067.94	7839.94	12820.00	12820.00	7752.06
GWOZDZ MIKE	208-09-8395	11/22/15	08/25/47	6172.42	9993.54	19072.00	19072.00	12899.58
HOFFMAN PAUL	208-09-8397	08/07/13	08/04/50	8586.06	13927.93	19572.00	19672.00	11085.94
LONARDI JAMES	208-10-0867	02/04/16	06/26/53	5870.48	13791.85	15467.00	15467.00	9596.52
PATCH	208-16-3006	09/15/24	09/17/63	2982.53	4724.65	5339.00	5339.00	2356.47
BRUNO JAMES	208-18-2749	11/30/24	09/23/63	2212.89	3512.26	5059.00	5059.00	2846.11
PETROS	208-18-2957	03/24/25	06/19/51	10016.49	16214.99	13030.00	16214.99	6198.50
DEROSE	208-18-3376	02/20/28	07/16/51	7393.86	11965.73	10257.00	11965.73	4571.87
WALTERS	208-18-4422	10/17/25	01/03/51	6690.37	10048.37	11343.00	11343.00	4652.63
MASTRANGELO F	209-01-2429	03/25/13	03/27/48	7698.47	12289.59	22715.00	22715.00	15016.53
YANKA JOHN	209-01-2434	09/09/15	01/04/49	5782.84	12241.21	18330.00	18330.00	12547.16

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CERBACH CHESTER E	209-01-2447	04/27/17	09/23/46	8157.61	13172.23	19957.00	19957.00	11799.39
HORNAK	209-01-9425	08/21/19	05/27/53	5646.12	8860.87	12524.00	12524.00	6877.88
KENCLICK CHARLES C	209-03-4569	11/09/12	09/09/63	2250.56	3578.81	8921.00	8921.00	6670.44
DAYAK CHARLES	209-05-2226	08/23/16	06/23/47	6438.52	10442.52	18118.00	18118.00	11679.48
ZAKEN STEVE	209-05-6089	01/07/14	04/05/48	6922.05	11234.05	21162.00	21162.00	14239.95
KVAK JOHN	209-05-9535	05/25/15	08/03/50	6775.99	10982.11	18186.00	18186.00	11410.01
TOFFOLO	209-07-8641	06/26/21	10/07/63	995.92	3931.54	5805.00	5805.00	4809.08
PATERRA	209-09-8673	10/10/18	09/09/63	2045.32	3537.19	6485.00	6485.00	4439.68
OGZNICHAK	209-10-0069	07/14/14	07/23/51	8008.65	12965.52	18852.00	18852.00	10843.35
BOCK RONALD J	209-28-4537	07/20/37	07/03/67	881.15	1237.27	1598.00	1598.00	716.85
CASTER WILLIAM	209-30-8470	08/03/38	09/03/68	894.31	1183.06	1205.00	1205.00	310.69
BYERS	209-30-9877	03/02/40	12/08/69	661.63	844.50	871.00	871.00	209.37
JINDRA	210-03-4101	10/23/20	10/03/47	8182.97	13274.59	15322.00	15322.00	7139.03
CHISMODY JOHHN P	210-07-4196	01/09/16	05/28/51	7842.73	15311.73	17049.00	17049.00	9206.27
RUGGIERO	210-09-9584	06/17/21	01/03/49	8054.37	13030.49	14647.00	14647.00	6592.63
SMITH MITCHELL	210-09-9763	11/09/17	10/28/46	11311.12	18404.74	19655.00	19655.00	8343.88
TELESKO JR	210-10-0462	01/06/19	10/20/52	6077.41	13411.66	14316.00	14316.00	8238.59
LUGINSKI PETE P	210-10-4180	05/28/16	09/19/52	6050.24	9669.24	15560.00	15560.00	9509.76
UDODOH STEVE	210-14-0640	01/07/24	08/03/51	6923.94	11726.81	12587.00	12587.00	5663.06
VASUTA JOSEPH	210-14-1089	09/01/25	01/21/47	8979.24	14561.74	13716.00	14561.74	5582.50
AGOSTINELLI	210-14-1467	05/11/25	06/18/53	4770.05	7734.55	10249.00	10249.00	5478.95
MARINELLI	210-14-1790	12/27/24	09/08/47	7183.29	11976.58	13594.00	13594.00	6410.71
STRAESSLEY ROY	210-14-4591	07/10/25	12/02/47	7685.39	12594.14	13633.00	13633.00	5947.61
BARDOS NICK G	210-14-5751	09/21/21	06/30/52	6078.24	9716.49	11753.00	11753.00	5674.76
RASPET VIC	210-14-6812	02/10/24	10/18/46	8968.84	14647.59	15395.00	15395.00	6426.16
DONNER LOUIS	210-14-8497	05/06/24	08/21/50	7200.33	13254.45	13394.00	13394.00	6193.67
SEVERINE	210-14-9968	03/05/26	01/25/50	6664.91	15789.41	12815.00	15789.41	9124.50
BERTEOTTI RICHARD	210-24-0767	10/20/32	09/09/63	2177.91	3458.03	3334.00	3458.03	1280.12
ZOFCHAK PETER M	210-24-0830	04/26/31	09/16/63	2426.97	4140.22	3806.00	4140.22	1713.25
LUDINSKI	210-24-2253	07/23/25	01/12/53	5984.60	9747.97	10887.00	10887.00	4902.40
GRUDEVICH	211-01-0776	01/17/16	09/03/58	738.07	969.07	3741.00	3741.00	3002.93
HENDERSON	211-01-1145	10/30/13	01/27/47	7247.24	11770.99	22188.00	22188.00	14940.76
UNIBEL	211-01-3207	08/11/15	07/14/69	559.12	964.49	3173.00	3173.00	2583.88
FILOSI VAL	211-01-6340	08/16/14	05/02/51	7069.76	11535.76	17701.00	17701.00	10531.24
BRIGGS JR JESS J	211-03-9028	03/15/14	09/06/50	7114.02	11512.64	19326.00	19326.00	12211.98
MUSANTE JOSEPH J	211-03-9116	02/23/17	07/27/51	8417.89	13856.01	16968.00	16968.00	8550.11
OLIVERIO	211-03-9925	04/29/20	08/21/50	8465.50	13749.62	14748.00	14748.00	6282.50
LIS JULIUS P	211-05-1331	04/27/16	08/06/48	8353.17	13531.42	18748.00	18748.00	10394.83
KRUSIENSKI	211-07-5021	03/06/17	03/23/60	3487.03	5912.53	9964.00	9964.00	6476.97
MOZNICHAK	211-09-3720	02/29/20	04/04/46	11248.97	18255.97	17770.00	18255.97	7007.00
DZIKOWSKI	211-09-8396	05/08/15	07/14/52	5834.21	9433.96	16625.00	16625.00	10790.79
FILIUS	211-14-0037	10/06/24	03/24/47	9124.64	14793.76	14450.00	14793.76	5669.12
SVITEK GEORGE E	211-14-1379	07/27/25	11/25/47	10510.13	16987.75	14685.00	16987.75	6477.62
OUDI	211-14-2186	01/21/25	09/23/46	13435.78	21771.03	16267.00	21771.03	8335.25
MANCUSO FRANK	211-14-3184	09/11/26	06/05/51	6448.59	9957.71	10420.00	10420.00	3971.41
HORVATT WILLIAM	211-14-3500	03/28/26	05/04/51	12306.33	19438.45	13096.00	19438.45	7132.12
ROSELLI LOUIS	211-14-4062	06/06/26	01/22/47	8709.91	14821.78	13773.00	14821.78	6111.87
HARPER	211-14-4452	10/25/25	07/28/50	5155.63	7699.88	10717.00	10717.00	5561.37
DUPESKO JOHN	211-14-4802	11/09/26	07/10/52	5340.13	8314.25	9679.00	9679.00	4338.87
SIVOVEC	211-14-5039	10/02/24	05/01/47	10063.84	16329.71	14739.00	16329.71	6265.87

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MCELHANEY	211-14-5711	05/02/27	10/21/63	2518.75	4001.00	4622.00	4622.00	2103.25
BRODNICK ROBERT	211-14-7654	06/24/25	06/10/47	9835.24	15956.74	14616.00	15956.74	6121.50
CAROSONE DELI	211-14-8225	06/21/25	07/17/51	5675.60	9650.72	11481.00	11481.00	5805.40
MASTRANGLO A	211-14-8347	08/10/25	04/10/47	8026.75	13022.12	13281.00	13281.00	5254.25
MASSINO JOHN	211-14-8348	02/25/25	01/28/53	6620.09	10739.59	11116.00	11116.00	4495.91
MALOY THOMAS J	211-14-9206	08/26/26	11/01/65	1363.99	2066.61	3451.00	3451.00	2087.01
KEUTROS	215-44-3678	04/22/38	04/29/63	3276.83	5192.20	2888.00	5192.20	1915.37
OSSI	218-01-3490	12/16/19	06/30/48	8679.55	14098.42	15970.00	15970.00	7290.45
JETT	233-26-1181	11/30/19	09/25/50	8087.76	13112.01	14604.00	14604.00	6516.24
POLINSKI	235-20-3904	05/22/25	05/14/51	6361.00	9739.37	11572.00	11572.00	5211.00
SLOUGH	270-22-9183	04/10/26	08/28/50	6352.33	11954.08	11749.00	11954.08	5601.75
DOMINE TED	290-20-5048	07/17/26	08/13/47	7026.59	11405.96	12799.00	12799.00	5772.41
HABE	292-12-9307	10/01/22	10/30/46	7867.21	13449.71	15947.00	15947.00	8079.79
SIVAK STEVE	296-10-5714	08/22/16	11/24/69	669.74	891.11	2771.00	2771.00	2101.26
JOHNSTON DAVID S	305-22-9797	04/15/25	09/18/50	6901.71	13437.08	12697.00	13437.08	6535.37
HOOVER DAVID T	462-66-8430	09/10/39	03/03/64	2575.82	4009.94	2310.00	4009.94	1434.12
DORANZIO	466-66-7609	11/03/41	02/21/63	2759.58	4395.83	2316.00	4395.83	1636.25
PICCARDO	527-38-8947	11/28/37	07/11/66	1111.60	1650.60	1781.00	1781.00	669.40
GLEBA JR JOSEPH P	540-30-1183	03/17/25	07/16/52	7208.62	12242.49	11669.00	12242.49	5033.87
JENNETTE	714-18-3858	07/07/24	11/14/63	2549.24	4041.11	5398.00	5398.00	2848.76
KVAK PAUL R	715-10-8853	12/27/22	07/09/47	5071.28	6996.28	13943.00	13943.00	8871.72
MALPASSI	715-10-8945	09/16/24	07/22/63	2155.32	3435.44	5111.00	5111.00	2955.68
ALTIERI SYLVAN	716-01-5351	03/13/18	03/23/60	3428.95	5556.07	9337.00	9337.00	5908.05
BARONI JOHN	717-09-9256	07/08/15	02/23/60	3774.54	7133.66	10875.00	10875.00	7100.46
KISON	717-12-1168	04/20/19	07/15/63	3081.52	4871.77	6795.00	6795.00	3713.48
				2656980.41	4380142.77	5099413.00	5399271.14	2742290.73

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TRIAL TERM. PART XVIII

By Judge Birns

Daitch v. *Delight Fashions, Inc.*—This case was tried non-jury and for its greater part consisted of documents offered and received in evidence. Plaintiff was an employee of the defendant Delight Fashions, Inc. and was included among those encompassed by a "profit-sharing plan and trust" instituted by the defendant Delight Fashions, Inc. for the benefit of its employees by agreement with certain named trustees.

Action is now brought against the defendant Delight Fashions, Inc. and the trustees of the said profit-sharing plan and trust individually and in their trustee capacity to recover the sum of $4,774.53, representing the benefits plaintiff asserts are his under the terms of the agreement.

The defendants have interposed a general denial together with a counterclaim for the sum of $1,500 for alleged legal expenses in defending the instant action, which action defendants assert is unwarranted.

The agreement in question establishing the plan and trust was executed on April 30, 1962, retroactive to May 1, 1961. On May 1, 1965, however, it was amended to exclude the plaintiff as well as other employees for whom the defendant employer was required under a collective bargaining agreement to make contribution to a Union Welfare Fund and Pension Plan.

The agreement at bar provided for certain benefits, if, as and when employees, such as plaintiff, reached the retirement age of seventy. These benefits were to result from contributions made by the defendant Delight Fashions, Inc., as employer.

However, plaintiff retired before his seventieth birthday. Where an employee retired prior to retirement age, the agreement provided (Article Eight, paragraph 5) for payment of 10 per cent of the balance credited to each employee in the trust accounts, for each full year of employee participation therein.

However, it is the plaintiff's position that he is entitled to receive a sum greater than the percentage specified because, as he insists, his right to recover fully vested and became non-forfeitable as a result of the failure of his employer to continue contributions under the original plan. Plaintiff contends that the amendment of May 1, 1965 acted as a partial termination of the plan and trust, entitling him to the entire amount credited to his account at the time of amendment.

The trust provided (Article Sixteen, paragraph 1) that it was "intended to be permanent and that it is the declared intention of the company that it will not be discontinued except for business necessity." While the employer had the right thereunder to discontinue the plan as to the employees or in its entirety, the trust agreement paragraph continued, as far as is applicable:

> ". . . in the event the Company . . . fails to make a contribution hereunder . . . the participating employees who at the date of such discontinuance or failure to contribute shall be employed . . . by such Company . . . shall become fully vested with all amounts credited to their accounts at that time, and if the plan be discontinued in its entirety, each participating employee shall become fully vested with all amounts credited to his accounts (sic) at that time . . ."

In support of his position plaintiff seeks to avail himself of section 401(a)(7) of the Internal Revenue Code of 1954 and rulings made thereunder by the Internal Revenue Service, in connection with the agreement at bar.

It appears that this agreement, upon application of the defendants, had been submitted to the Internal Revenue Service and qualified as an "exempt trust." Plaintiff argues that such approval would not have been conferred by the Internal Revenue Service if the provisions of the agreement, now in dispute, had not been construed as creating in plaintiff and other similar employees, under the circumstances here, fully vested and non-forfeitable rights in the sums credited to their accounts.

The application of the said section and rulings bears only upon the tax exempt status of the trust agreement and cannot serve to

alter or amplify the plain meaning of the contract of the parties (*Barco* v. *Stein*, 44 Misc. .....).

The amendment of the plan and trust on May 1, 1965, was neither a partial nor a total termination of the plan as it continued in full force and effect for those employees for whom a separate contribution to the other welfare plan was not required. In this respect it is not dissimilar from that under consideration in *Fernekes* v. *C. M. P. Industries, Inc.* (13 N. Y. 2d 217).

In *Fernekes*, the defendant corporation had established an employees' retirement and profit-sharing program, encompassing employees in two divisions of the corporation. When one of the divisions were sold to another concern, certain employees covered by the plan lost their employment. Seeking to recover the full amounts credited to their accounts, these employees argued that as to them the plan discontinued. It appeared, however, that the plan was in full force and effect for the remaining employees. The employer continued to make contributions for said employees.

The Court of Appeals denied recovery, holding that the plan was never discontinued, and emphasized that the plan contained no provision for partial discontinuance.

The provisions of the agreement at bar do not contain any provision for partial discontinuance. This court may not write into the agreement something which is not there (*Fernekes* v. *C. M. P. Industries, Inc., supra*, p. 224).

It therefore must be held here that the amendment did not constitute a partial discontinuance or termination.

Thus the plaintiff is entitled only to that percentage of the amount credited to his amount as had vested at the time of his retirement.

As stated hereinabove, under the trust agreement (Article Eight, paragraph 5), 10 per cent of the amount credited to the account of each employee was to vest for each full year of participation in the plan. The plan became effective on April 30, 1961, and when the plaintiff ended his employment with the

defendant employer on December 30, 1966, he had five full years of participation in the plan. At that point, the sum of $5,167.59 was credited to plaintiff's account. Hence, he is entitled to 50 per cent of the sum so credited.

With respect to the counterclaim the trust agreement (Article Thirteenth, paragraph 2) provided that in the event a participant in the fund brings an "ill-advised action against the trust and the results are adverse to him, then any legal costs involved in defending the said action may be charged against the account of the participant." As the results herein are not adverse to the plaintiff, the counterclaim is dismissed. Accordingly, I find judgment for the plaintiff in the sum of $2,583.80 with interest from the thirtieth day of December, 1966, and judgment may enter therefor.